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Report of the Independent Expert, Mr. Pedro Nikken, on developments in the human rights situation in El Salvador, prepared pursuant to Commission on Human Rights resolution 1993/93 and Economic and Social Council decision 1993/284

CONTENTS

		Paragraphs	Page
Introduction		1 - 29	3
I.	OVERALL POLITICAL SITUATION	30 - 37	11
II.	CONSIDERATION OF DEVELOPMENTS IN THE HUMAN RIGHTS SITUATION	38 - 93	13
	A. General consideration of the subject	38 - 40	13
	B. Right to life	41 - 57	14
	C. Enforced or involuntary disappearances	58 - 59	19
	D. Torture and other cruel, inhuman or degrading treatment or punishment	60 - 64	19
	E. Arbitrary detention	65 - 66	20
	F. Administration of justice and right to due process of law	67 - 72	20

CONTENTS (continued)

		Paragraphs	Page
II.	(cont'd)		
	G. Political rights	73 - 77	21
	H. Economic, social and cultural rights	78 - 86	23
	I. Situation of children	87 - 89	24
	J. Situation of women	90 - 93	25
III.	APPEAL TO THE GOVERNMENT OF EL SALVADOR AND THE FRENTE FARABUNDO MARTI PARA LA LIBERACION NACIONAL (FMLN) TO CARRY OUT FULLY THE REMAINING AGREEMENTS, TOGETHER WITH THE RECOMMENDATIONS MADE BY ONUSAL AND BY THE AD HOC COMMISSION AND THOSE PRODUCED IN DUE COURSE BY THE COMMISSION ON THE TRUTH	94 - 133	26
	A. Office of the National Counsel for the Defence of Human Rights	95 - 97	26
	B. National Civil Police	98 - 102	26
	C. Judicial system	103 - 107	28
	D. Recommendations of the Ad Hoc Commission	108	29
	E. Recommendations of the Commission on the Truth	109 - 125	29
	F. FMLN weapons	126 - 127	34
	G. International verification	128 - 133	35
IV.	CONCLUSIONS	134 - 150	38
	A. Developments in the human rights situation in the country	136 - 140	38
	B. Implementation of the Peace Agreements	141 - 146	39
	C. Implementation of the recommendations	147 - 150	40
V.	RECOMMENDATIONS	151 - 161	41

Introduction

1. The human rights situation in El Salvador has been considered by the Commission on Human Rights since its thirty-seventh session, in 1981, at which time, in resolution 32 (XXXVIII), it requested the Chairman to appoint a special representative of the Commission with a mandate to investigate the reports about all kinds of grave violations of human rights in El Salvador and to make appropriate recommendations. Mr. José Antonio Pastor Ridruejo (Spain) was appointed the Commission's Special Representative and he submitted an annual report to the Commission from 1982 up until 1992, in addition to his annual reports to the General Assembly.

2. On 3 March 1992 the Commission adopted, without a vote, resolution 1992/62, in which, inter alia, it extended its thanks to the Special Representative for his report and requested the Secretary-General to appoint an independent expert to discharge a new mandate, which consisted initially in providing assistance in human rights matters to the Government of El Salvador, in considering the human rights situation in that country and the effects of the Peace Agreements on the effective enjoyment of human rights, and in investigating the manner in which both parties applied the recommendations contained in the final report of the Special Representative and those made by the United Nations Observer Mission in El Salvador (ONUSAL) and the commissions established during the negotiating process. He was instructed to report to the General Assembly and the Commission on Human Rights. Mr. Pedro Nikken (Venezuela) was appointed Independent Expert.

3. The Independent Expert submitted his first report to the General Assembly at its forty-seventh session. 1/ On 18 December 1992, the General Assembly adopted resolution 47/140, in which it decided, inter alia, to commend the Independent Expert for his report and the members of the Ad Hoc Commission and the Commission on the Truth and the United Nations Observer Mission in El Salvador for their work in favour of human rights and the consolidation of peace in El Salvador. The General Assembly endorsed all the recommendations made by the Independent Expert in his report.

4. The Independent Expert submitted a further report to the Commission 2/ at its forty-ninth session. On 10 March 1993, the Commission adopted resolution 1993/93, in which, inter alia, it commended the Independent Expert for his work and thanked him for the report submitted in accordance with his terms of reference (para. 1); expressed its profound satisfaction and gratitude to El Salvador for the signal importance of the ending of the armed conflict (para. 2); expressed its concern at the continued reports of violations of human rights (para. 4); urged the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional to carry out in full the remaining agreements, together with the recommendations made by ONUSAL, the Ad Hoc Commission and those to be produced in due course by the Commission on the Truth (para. 5); endorsed all the recommendations made by the Independent Expert (para. 7); decided to request the Secretary-General to extend for one year the mandate of the Independent Expert to report on human rights developments in El Salvador, providing the assistance required by the Government in this field (para. 8); and requested the Independent Expert to report to the Commission on Human Rights at its fiftieth session on action taken to give effect to the resolution (para. 9).

5. The General Assembly has, since 16 September 1991, also considered eight reports submitted by the Director of the Human Rights Division of the United Nations Observer Mission in El Salvador (ONUSAL), which was established in accordance with Security Council resolution 693 (1991) of 20 May 1991. 3/ The specific mandate of the ONUSAL Human Rights Division is to verify compliance with the Agreement on Human Rights signed by the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) in San José, Costa Rica, on 26 July 1990. 4/

6. The Secretary-General has also repeatedly informed the Security Council of developments in the Salvadorian peace process. Apart from the above-mentioned reports by the Independent Expert, 5/ there are a number of others, mentioned below.

7. In letters dated 26 and 29 January 1993 and 2 April 1993, the Secretary-General informed the members of the Security Council of the progress in implementing various specific aspects of the Peace Agreements signed between the Government of El Salvador and the FMLN. 6/ In a further report to the Security Council dated 21 May 1993, 7/ the Secretary-General said that, 16 months after the cease-fire had taken effect, the peace process had advanced significantly and was on course. Among the main achievements he mentioned full respect by both parties for the cease-fire, the formal end to the armed conflict on 15 December 1992 and the conversion of the FMLN into a political party. 8/ However, he pointed out, inter alia, that efforts were required to accelerate the land transfer programme; the development and deployment of the new National Civil Police (PNC) as the country's sole police authority; implementation of the recommendations of the Commission on the Truth; the recovery of assault weapons in civilian hands; and the process of registration on the electoral rolls of all Salvadorians qualified to vote in the general elections in March 1994. 9/ Two addenda to the document (Adds. 2 and 3) published on 25 May 1993 contain the Secretary-General's proposal on the land transfer programme made to the parties on 13 October 1992 and a detailed analysis of the recommendations of the Commission on the Truth. 10/

8. On 29 June 1993, the Secretary-General reported to the Security Council on the discovery, inside and outside Salvadorian territory, of clandestine deposits of weapons belonging to the FMLN. 11/ He said in this connection that he had made a firm protest to the Coordinator-General of the FMLN, for the Supreme Electoral Tribunal had legalized the FMLN as a political party by accepting in good faith that the FMLN's inventory accounted for all of the arsenal; indeed, the Secretary-General himself, trusting in that fact, had affirmed that El Salvador had crossed the line from armed peace into a new era. He also reported that, after offering explanations and excuses, the FMLN had agreed to cooperate with ONUSAL in locating and destroying all of its remaining weapons in all clandestine caches by 4 August 1993. 12/ On 30 August 1993, the Secretary-General reported to the Security Council that the process of verifying and destroying the FMLN's weapons was finally completed on 18 August 1993, 13/ and that the FMLN military structure had been effectively dismantled and the former combatants demobilized and reintegrated, in a framework of full legality, into the civil, political and institutional life of the country. 14/ The Secretary-General commended President Cristiani's conduct during that delicate period; pointed out that

the irreversibility of the Salvadorian peace process had again been demonstrated by the happy outcome to that incident and recommended to the Government of El Salvador, the Legislative Assembly and the Commission for the Consolidation of Peace (COPAZ) that measures should be adopted as quickly as possible to issue regulations on private security services and on the effective registration, possession and bearing of firearms by private individuals. 15/

9. In a report on assistance for the reconstruction and development of El Salvador, submitted to the General Assembly at its forty-eighth session, on 3 September 1993, 16/ the Secretary-General said that national reconstruction and the building of democratic institutions were the central axis for consolidating the democratic peace process in El Salvador. 17/ In this regard, the Secretary-General reiterated his call on the Government to accelerate the land transfer programme and to ensure the honesty of the electoral register, with the inclusion in the rolls of approximately 700,000 citizens, and free and massive participation of the people in the voting. 18/ He reiterated his call for the opportune supply of external funds for the implementation of the National Reconstruction Plan, the strengthening of democratic institutions and the implementation of the adjustment process, within the framework of economic and social stability and sustained growth of productive activity; 19/ and he pointed out that the peace process was entering a phase of consolidation, 20/ which should lead to firm peace based on a democratic, pluralistic and participatory regime within a reactivated and transformed economy set on the path to sustainable human development in a modern and independent State under the rule of law. 21/ He also said that the depoliticization and gradual specialization of the non-governmental organizations and the strengthening of their administrative, executive and financial capacity constituted a growing need for the more effective participation of civilians in the processes of national reconstruction and democratic development. 22/

10. In a further report to the Security Council submitted on 14 October 1993, 23/ the Secretary-General said that various steps had been taken to carry out a large number of the recommendations made by the Commission on the Truth. The matter will be discussed in further detail below. 24/

11. The Secretary-General reported that, at a high-level meeting on 8 September 1993 in which ONUSAL participated, both the Government and the FMLN agreed on the need to step up the process of implementing the recommendations of the Commission on the Truth before 20 November 1993 and he urged the parties, including COPAZ and the other institutions involved, to make every effort to achieve that goal. 25/

12. On 20 October 1993, the Secretary-General submitted a report to the Security Council on the activities of the ONUSAL Electoral Division and the organization of the elections scheduled for 20 March 1994. 26/

13. Furthermore, on 20 August 1993, the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities made a statement on the peace process in El Salvador and the text was adopted by the Sub-Commission. 27/ The statement, among other things, expressed to the

Government of El Salvador profound satisfaction and appreciation for the end to the armed conflict; emphasized the importance of the Peace Agreements; stressed the need for full compliance with all the pending peace agreements; emphasized that effective protection of human rights called, inter alia, for continued strengthening of the judicial system and of ONUSAL; and reiterated the Sub-Commission's appeal to all States to contribute to the consolidation of peace and to support efforts to ensure full respect for human rights, on the basis of full implementation of and generous funding for the Peace Agreements and the National Reconstruction Plan.

14. On 20 December 1993, the General Assembly adopted resolution 48/149, entitled "Situation of human rights in El Salvador", in which, inter alia, it commended the Government of El Salvador and the FMLN for having fulfilled most of their commitments and having overcome a number of obstacles to implementation of the agreements (para. 1); expressed its concern that important elements of the agreements had been only partially implemented, and therefore called on the Government of El Salvador and the FMLN to step up their efforts to complete, by the agreed dates, the land transfer programme, the reintegration programme for ex-combatants, the deployment of the National Civil Police and phasing-out of the National Police, as well as the collection of weapons issued for the exclusive use of personnel of the armed forces and the adoption of the Act on Private Security Services (para. 2); and called upon all Governments to contribute to the consolidation of peace and the attainment of full respect for human rights by supporting full compliance with the Peace Agreements (para. 6).

15. The General Assembly condemned recent acts of violence that might be politically motivated and considered it inadmissible that such acts, perpetrated by a small minority, should jeopardize the progress made in implementing the agreements and hamper the holding of free elections in March 1994 (para. 3). In that context, it supported the efforts of the Secretary-General, in cooperation with the Government, to initiate immediately an impartial, independent and credible investigation of illegal armed groups, as recommended by the Commission on the Truth, and it urged all sectors of society in El Salvador to cooperate in such an investigation (para. 4). The General Assembly reiterated its gratitude for the important work being done by the Secretary-General and his representatives and by ONUSAL and extended to them its support so that they could continue to take all necessary steps to contribute to the successful implementation of the Peace Agreements (para. 7); and it acknowledged with satisfaction the continuing efforts of the Governments of Colombia, Mexico, Spain and Venezuela, which make up the Group of Friends of the Secretary-General, as well as the Government of the United States of America, in support of the steps being taken by the Secretary-General to consolidate the peace process in El Salvador (para. 8).

16. The Assembly noted that, as pointed out by the Secretary-General, the human rights situation in El Salvador continues to evolve in an ambivalent fashion, since, on the one hand, there continue to be signs of improvement and, on the other hand, violations persist, particularly as regards the right to life, and the capacity of the judicial system to clarify and punish such violations continues to be unsatisfactory (para. 9); and it urged the Government of El Salvador and all other institutions involved in the electoral process to adopt the necessary measures to create an atmosphere conducive to

ensuring that the elections in March 1994 are free, representative and authentic, since they are a key component of the consolidation of the peace process (para. 11). The General Assembly noted with satisfaction the statement of 5 November 1993, entitled "Commitment of the presidential candidates to peace and stability in El Salvador", in which the candidates, inter alia, solemnly committed themselves to maintaining the constructive evolution of the peace process and to implementing all the commitments contained in the Peace Agreements and rejected any politically motivated violence or intimidation (para. 5).

17. The Independent Expert had prepared his previous reports to the General Assembly and the Commission on Human Rights on the basis of all documentation collected during the period prior to the report, as well as information that he himself had obtained on the spot, from both non-governmental and official sources. Unfortunately, on this occasion he has been unable to count on the invaluable input from such a visit, for reasons which are set out below.

18. On 1 November 1993, the Independent Expert sent a request to the Government, through the Permanent Mission of El Salvador to the United Nations Office at Geneva, together with the corresponding programme of official interviews, so as to visit the country from 9 to 15 January 1994. The proposed dates were the deadline in order for the report to be drafted in time to be edited, translated and distributed. Such activities can only be carried out if the Expert submits his report before 24 January. The advantage of such dates was that the most recent information possible could be submitted to the Commission. Last year, for example, the visit took place from 10 to 16 January.

19. Instead of an appropriate and timely reply to the request for a visit, the Independent Expert simply received from the Centre for Human Rights a copy of two communications containing comments on matters of form in connection with the procedure for appointing the Independent Expert. The first communication was a note verbale from the Permanent Mission dated 14 December 1993. The first comment had to do with a mistake in transcription made in publishing Commission on Human Rights resolution 1993/93, which approved the extension of the appointment of the Independent Expert. Operative paragraph 8 stated in the Spanish version: "Decides to request the Secretary-General to extend by one year the appointment of the Independent Expert with the mandate to report on human rights developments in El Salvador, providing the assistance required by the Government in this field". Instead of being published as adopted, the Spanish version said: "Requests the Secretary-General to extend for one year the mandate of the Independent Expert ...". However, this mistake in transcription was duly corrected in the course of the debates in the Economic and Social Council. A corrigendum was added to the publication of the official documents of the Economic and Social Council, on 21 July 1993. 28/ In any event, the note verbale from the United Nations Secretariat informing the Government of El Salvador of the extension of the appointment of the Independent Expert, on 29 October 1993, faithfully accords with the text which was adopted and which, as stated, had already been the subject of the relevant corrections. In this context, the Independent Expert

finds it incomprehensible that these circumstances should be used as basis for questioning, if only implicitly, the legitimacy of his mandate.

20. The second observation in the note verbale seems to be based on the fact that the expression "requests the Secretary-General to extend the appointment of the Independent Expert ... involves a process of appointment which the Government of El Salvador still has not been informed would take place". The note verbale contains no specific request to the Centre, but it does indicate that the Government of El Salvador would ask for an opinion from the United Nations Legal Service about the interpretation of paragraph 8 of the resolution and that, when a reply was obtained, "we will send you a copy". It should be stressed that, although the note verbale in question is dated 14 December 1993, communication MP ONU 388 93 of the Permanent Mission of El Salvador to the United Nations Office at Geneva requesting the announced opinion is dated 23 December and was received by the Legal Service on 28 December, dates which did not hint at any reply before the date planned for the start of the visit to El Salvador.

21. Furthermore, again on 28 December 1993, the Director of the Centre for Human Rights was sent, together with a letter dated 19 October 1993 (sic), a communication which was in turn dated 23 December and was addressed to him by the Minister for Foreign Affairs of El Salvador. The note expresses "the surprise of the Government of El Salvador at the procedure used to make the appointment, since there was no consultation about it and no corresponding notification was received at the time". It adds that "to date no national institution protecting human rights [has benefited] from the technical assistance which, under the mandate, the Independent Expert is required to provide". Lastly, it asks the Centre for "an explanation about the procedure followed for the appointment of Mr. Pedro Nikken as Independent Expert for El Salvador".

22. The Director of the Centre for Human Rights answered the Government of El Salvador in note G/SO 214 (43-12) of 7 January 1994. The Director emphasized that "the paragraph in question did not require the Secretary-General to appoint an Independent Expert", but simply "to extend for one year the appointment of the Independent Expert, already made in 1992. It should be remembered that the Government, in that year, had already agreed to the appointment of Mr. Pedro Nikken". The Director of the Centre also added, in connection with the comment by the Minister for Foreign Affairs about the assistance to be provided by the Independent Expert, that to date the Expert "has not received any specific request from Your Excellency's Government in connection with the provisions of such assistance". He also pointed out that the Independent Expert had in fact made offers in that regard, that there had been no response and that the recommendations contained in his reports "could constitute the basis for a technical assistance programme". The Independent Expert fully shares this point of view, not without some regret that no attention has been paid to the recommendations.

23. In a note verbale of 5 January 1994, in other words, only two working days before the start of the visit, the Permanent Mission of El Salvador returned, without issuing the corresponding visa, the laissez-passer of the professional from the Centre for Human Rights who was to accompany the

Independent Expert on his planned visit, stating that the Mission "requires, in order to consider issuing the visa requested, an answer to the note we sent to the Centre for Human Rights, reference MP CDH 376 93, dated 14 December 1993". It should be emphasized that the note verbale in question contained no request whatsoever to the Centre for Human Rights and simply announced that the United Nations Legal Service was to be asked for an opinion, as happened 14 days later.

24. Suddenly, several events occurred that were somewhat unexpected in this context but consistent with the Government's obvious aim of preventing the Independent Expert from visiting the country, without a direct refusal and trying to place the responsibility for thwarting it on him and on the Centre for Human Rights. On 10 January 1994, in other words, what would have been the second day of a visit scheduled to start on 9 January and to last six days, the Centre for Human Rights received a note from the Minister for Foreign Affairs of El Salvador agreeing to the visit. The note is dated 5 January, in other words, before the reply of the Director of the Centre to the Minister's previous note, which objected to the legitimacy of the form in which the Independent Expert was appointed. Later, a note verbale from the Mission of El Salvador, dated 10 January and received by the Centre for Human Rights on 12 January 1994, asked the Centre to "communicate to us urgently the dates on which the Independent Expert will be visiting El Salvador so as to arrange the interviews requested". It is ironic that this note was received on what should have been the fourth day of a visit requested with sufficient advance notice, and with no urgency, on 1 November 1993. What is more, the whole of this lamentable episode was compounded by greater confusion and contradiction when, on 14 January 1994, a further note was received from the Mission, dated 12 January, in which, after urging organization of the mission, it was stated that, since a report from the Legal Service was being awaited, "we hope that the Centre for Human Rights will wait for the legal opinion from that Department in order to continue with matters relating to the Independent Expert". However, the same Ambassador who signed the previous note wrote to the Independent Expert, in his capacity as such, on 13 January, regretting that the visit to El Salvador had been cancelled and expressing "profound surprise" at his decision to draft a report without visiting the country.

25. It is unnecessary to emphasize all the inconsistencies in this exchange. However, the Independent Expert would point to some facts which highlight the real purpose of these stratagems. The Independent Expert was in Geneva in the first week of November, in other words, after the United Nations Secretariat had officially communicated to the Permanent Mission of El Salvador, and through the Mission, to the Government, the extension of the appointment. On that occasion, the Independent Expert, in his capacity as such, had a smooth and cordial interview with the Ambassador heading the Mission for more than one hour, in which time the planned visit, among other things, was discussed. At no point was the Independent Expert's status questioned. Secondly, it is surprising that the Minister for Foreign Affairs of El Salvador, in a note sent to the Centre for Human Rights on 28 December 1993, expressed surprise that "no corresponding notification was received at the time" of the extension of the appointment of the Independent Expert, since the notification, which was simply in the nature of confirmation, had occurred

on 29 October. Thirdly, it is regrettable that, after the request to make the visit was made on 1 November, it took such a long time, i.e., till the last days of the year, in the holiday period, when there were less than two weeks to go before the start of the planned timetable, to make requests and to ask for opinions that it was very difficult to answer so quickly. Lastly, the Government itself ended up by recognizing, too late obviously, the legitimacy of the extension of the Independent Expert's appointment and the comments were simply a means of putting off an answer to the request made on 1 November and attending to it when the reply was no longer useful. Actually, in agreeing to the visit, before receiving note G/SO 214 (43-12) of 7 January 1994, which answered the comments made as a matter of form about the extension of the appointment, the Government of El Salvador implicitly agreed that they were not an obstacle to granting the Independent Expert's visit or grounds for objecting to his legitimacy.

26. The failure to reply in time to the request of 1 November, which went so far that the reply was received after the visit should have started, was not only an insuperable obstacle to a visit on the planned date, but also an act which can only be interpreted as indirect unwillingness of the Government to receive the Independent Expert, especially since conditions were laid down for issuing the visa to the professional from the Centre for Human Rights who was to accompany him.

27. In this regard, the Independent Expert has no alternative but to take the view that the unjustified delay in answering his request deprived him on this occasion of the cooperation and consideration previously extended to him at all times by the Salvadorian authorities. Since there was no longer time to organize a visit already planned two months beforehand, the Independent Expert's answer to the Government on 11 January 1994 was that he had no alternative but to prepare his report to the Commission on Human Rights without visiting the country and only with the documents and other information available. The Independent Expert deeply deplores what he regards as an inexplicable situation and the fact that this year he does not have the valuable experience provided by direct contact with the real situation in the country at the present time.

28. One of the Independent Expert's greatest satisfactions in life has been the opportunity to take part in the process of negotiating peace and of making a contribution, however small, to the success of that process. Since then, he has been deeply committed to El Salvador and to the full success of the process of peace and democratic consolidation on which the country has set its sights. He has been, is and will be open to continuing support for this process and to cooperation in ensuring that the human rights situation improves and that acts which the people and the Government are committed to overcoming will be banished forever. To this end, of course, a minimum of cooperation is needed from the Government, cooperation which was offered to him in 1992, but, because of the events mentioned, has not been available on this occasion.

29. Pursuant to Commission on Human Rights resolution 1993/93 and Economic and Social Council decision 1993/284, the Independent Expert has the honour to submit the present report to the Commission on Human Rights. With regard to methodology, the report endeavours to keep to the mandate conferred on the

Independent Expert, under the terms of which he is required "to report on human rights developments in El Salvador, providing the assistance required by the Government in this field" and "to report to the Commission on Human Rights at its fiftieth session on the action taken to give effect to Commission resolution 1993/93". 29/ In the latter respect, the Independent Expert considers that the most relevant matters for the purposes of the information required are those contained in paragraph 5 of resolution 1993/93, in which the Commission urges "the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional to carry out fully the remaining agreements, together with the recommendations made by the United Nations Observer Mission in El Salvador and by the Ad Hoc Commission and those to be produced in due course by the Commission on the Truth". In view of the fact that, as pointed out earlier, no request for technical assistance has been received, the report will be confined to human rights developments and a brief comment on the matters the Government and the FMLN have been urged to take up. First, however, a short description of the general political situation is needed.

I. OVERALL POLITICAL SITUATION

30. El Salvador has been at peace since 1 January 1992, after a decade of civil war preceded by a decade of more or less widespread violence, all at enormous human and material cost. The peace process has been the successful outcome of political and diplomatic efforts spurred by the political readiness of both parties, a process which mobilized various Governments and, above all, the United Nations. The result, together with the ending of the conflict, was a complex set of political agreements between the Government and the FMLN.

31. The conflict, although purely internal in terms of geography and of the basic reasons, had a notable international dimension to it. This was so at the geopolitical and diplomatic level, in view of the considerable regional effects of the conflagration. Again, this was so with regard to international public opinion, which was frequently shocked by the very serious events that occurred during the conflict. Lastly, it had an outcome that involved active - and hitherto unheard of - participation by the United Nations, despite the fact that the San Francisco Charter does not directly envisage action by the Organization in non-international conflicts.

32. The Independent Expert has already discussed in some detail the chronology and content of the Agreements in his preceding reports. 30/ In short, they were the following: (a) the Geneva Agreement of 4 April 1990 established the format and methodology of the negotiations; (b) the Caracas Agenda of 21 May 1990 scheduled the phases and the topics for the negotiations; (c) the San José Agreement of 26 July 1990, which contained specific undertakings in connection with the observance and safeguarding of human rights; (d) the Mexico Agreements of 27 April 1991, which comprised important constitutional reforms, promptly ratified by the Legislative Assembly, as well as other political agreements, more particularly the establishment of the Commission on the Truth; (e) the New York Agreement of 25 September 1991, which established a new format for speeding up the process and created the National Commission for the Consolidation of Peace (COPAZ) as "a mechanism for the monitoring and the participation of civilian society in the process of changes resulting from the negotiations"; (f) the New York Act of 31 December 1991, whereby the Parties declared that they had reached final

agreements bringing to an end the negotiations on all the substantive items under discussion; (g) the Chapultepec Peace Agreement of 16 January 1992, which formalized the completion of the peace negotiations and was signed by the Negotiating Commission of the Government, the FMLN General Command and the Secretary-General of the United Nations and was also initialled by President Cristiani. It is a complex lengthy agreement containing nine chapters: I. Armed Forces; II. National Civil Police; III. Judicial system; IV. Electoral system; V. Economic and social questions; VI. Political participation by the FMLN; VII. Cessation of the armed conflict; VIII. United Nations verification; and IX. Implementation timetable.

33. The Peace Agreements achieved in this context were not confined to solving military questions, but built a substantial programme of reforms intended to tackle some of the deep-lying causes of the conflict, to safeguard respect for human rights and to promote the democratization of the country. Accordingly, this is a case in which United Nations participation is singular in two respects: first, because of the United Nations presence in the political and diplomatic process that built up the Peace Agreements in 1990 and 1991, and secondly, because of the very substance of the Agreements which the Organization strove to bring about and with which it verifies compliance. They involve sweeping reforms which, properly carried out, should lead to a healthy transformation in Salvadorian society. At all events, the war has ended and peace has come to be seen as an irreversible gain.

34. In implementing the Agreements, a number of difficulties of various kinds arose, some of them being resolved in further negotiations and agreements, often supported by the United Nations acting as an intermediary. This was true, for example, of the new land agreement outlined in a proposal by the Secretary-General on 13 October 1992 and accepted by the parties, and of various adjustments to the implementation timetable.

35. In other instances, it has proved more difficult to overcome the obstacles in implementing the Agreements. In his preceding report to the Commission, 31/ the Independent Expert expressed his concern at the news transmitted by the Secretary-General to the Security Council that the recommendations of the Ad Hoc Commission to evaluate the officer corps of the armed forces, for the purposes of purging it, had not been properly implemented. 32/ This concern, over and above scrupulousness about compliance with the Agreements, was based on doubts about the sincerity of the subordination of the military to the constitutional civilian authorities.

36. Still more delicate is the case of compliance with the recommendations of the Commission on the Truth, something which has also run into difficulties and reactions. As will be pointed out below, 33/ in some instances, only a start has been made on implementing the Agreements, whereas in others the failure to comply has been complete.

37. On 20 March 1994, general elections will be held in El Salvador, including elections for the President and the Vice-President of the Republic, all of the seats in the Legislative Assembly, deputies to the Central American Parliament and the mayors of the 262 municipalities. They are the first elections in which all political and ideological schools of thought, including the FMLN, have decided - and have been allowed - to take part, with a minimum

of respect for the rules of the game. This is a crucial time and it reflects the readiness of all Salvadorians to settle their differences according to the rules of democracy.

II. CONSIDERATION OF DEVELOPMENTS IN THE HUMAN RIGHTS SITUATION

A. General consideration of the subject

38. Human rights have had a place in the antechamber of war and of peace in El Salvador's recent history. President Cristiani, as the Independent Expert has said in earlier reports, conveyed this in the important statement he made when the Chapultepec Peace Agreement was formalized: "... what is now beginning to happen in El Salvador is not the re-establishment of a pre-existing peace, but the beginning of a genuine peace based on social consensus, on a harmonious relationship between social, political and ideological sectors and above all on the conception that the country is a unified whole without exclusions of any kind". The long-lasting armed confrontation in El Salvador was the setting for atrocities which caused great suffering to the civilian population and for which none of the military forces engaged in the conflict was without blame. However, one significant cause was undeniably a structure in which the most serious violations of human rights were committed and most of the Salvadorian people were subjected to inequitable economic and social domination. Compliance with the spirit and the letter of the Peace Agreements opens a definite, and perhaps the only, way in the history of the country to overcome this structure. Accordingly, the objective of "safeguarding unrestricted respect for human rights" is a kind of keystone to all of the Agreements reached between the Government and the FMLN, with the backing of broad sectors of Salvadorian society.

39. In the Peace Agreements as a whole, ways and means of various kinds are established to ensure effective observance of human rights and to provide the State with suitable tools to fulfil effectively its duty towards the population and towards the international community to respect and safeguard those rights. The Agreements envisage the establishment and strengthening of lasting machinery to perform this task, such as the Office of the National Counsel for the Defence of Human Rights, the National Civil Police and the judicial system. They also provided for certain special interim bodies and procedures connected with verification of respect for human rights in the future, as in the case of ONUSAL with regard to the San José Agreement, and with investigation and evaluation of violations of human rights in the past, as in the case of Commission on the Truth. In the field of civil and political rights, agreements were also reached to overcome situations in which the recurrence and gravity of the violations demand priority action and to eliminate the chief causes commonly indicated as the sources of violations. This was the fundamental aim of the agreements on the armed forces. Lastly, there were also agreements on other human rights, such as political rights and economic, social and cultural rights. The implementation of these agreements should have a favourable impact on the effective enjoyment of human rights. In earlier reports to the General Assembly and to the Commission, the Independent Expert discussed in some detail the substance and scope of these agreements and would refer to them in matters relating to general consideration of the subject. The comments which follow try to sum up, within the limits imposed by the length of this report, some of the main aspects of

developments regarding compliance with the provisions of these agreements. Before embarking on this task, he will refer to cases in which actual observance of human rights in El Salvador has been jeopardized.

40. The Independent Expert has received many complaints from non-governmental organizations about cases of human rights violations in El Salvador. Most of them are known to ONUSAL, for which reason this report will, in general terms, confine itself to the reports transmitted to the Secretary-General by the Director of the ONUSAL Human Rights Division. The conclusions in those reports are summed up below. Nevertheless, he will not fail to comment on other disturbing situations, such as women's and children's rights, or the implementation of institutional reforms connected with respect for and the safeguarding of human rights.

B. Right to life

41. In his sixth report, the Director of the ONUSAL Human Rights Division pointed to the following problems faced by the Salvadorian judicial system in investigating and punishing violations of the right to life: the absence of measures to preserve and safeguard incriminating evidence in cases of murders and killings; the absence of measures to ensure the safety of witnesses and the improper handling of their testimony; the failure to use the proper technical means to establish the cause, manner and time of death; the failure to perform autopsies in a significant number of cases, notwithstanding the efforts of the Institute of Forensic Medicine; and the inefficiency of the judicial system and its auxiliary organs in identifying those responsible for deaths. 34/ This inability to investigate crimes was reflected in the failure of judges to take the requisite legal steps in the early stages of the investigation; in the slow and delayed participation of the Office of the Attorney-General; in the meagre or inadequate gathering of incriminating evidence and in the lack of readiness to investigate cases involving military personnel or agents of the security forces. The result was impunity. 35/ These observations were reiterated in the eighth report by the Director of the Human Rights Division. 36/

1. Extrajudicial or arbitrary executions

42. Also in his sixth report, the Director of the ONUSAL Human Rights Division said that active verification of complaints of violations of the right to life received by the Division had shown that murders continued to be committed on a selective basis, for political reasons. 37/ Verified cases of politically motivated extrajudicial executions mentioned in the sixth report include: (a) the murder on 24 August 1992 in the Santa Anita district of San Salvador of Mauricio Quintana Abrego, a lawyer who had worked for over 10 years for the intelligence service of the Armed Forces General Staff. According to his family's testimony, he had expressed his willingness to disclose information to human rights organizations; 38/ (b) the extrajudicial execution of Santos Gabino Palacios Monterrosa, a member of the armed forces who was engaged in intelligence activities, on 29 June 1992, on the outskirts of San Vicente; 39/ (c) the extrajudicial execution of Juan Adalberto Ayala Rivas, a member of the Military Intelligence Battalion, on 3 August 1992, on the Pan-American highway, while he was travelling in the direction of San Vicente; 40/ (d) the murder of Sergio Conrado

Sandoval, a member of the Salvadorian Peasant and Workers' Development Association, on 28 July 1992, in Sonsonate, by soldiers from Military Detachment No. 6, including among them Sergeant René Edgardo Sibrian; (e) the killing of Juan Arnulfo García Gámez, a security guard of FMLN Commander Alberto Enríquez, on 17 November 1992.

43. The Office of Tutela Legal del Arzobispado reported the following extrajudicial executions, maintaining that they were carried out by the "death squads": Francisco Parada Ochoa; Miguel Angel Rivera Zapata; Juan Carlos García Panameño; Máximo Rivera Zapata; Manuel de Jesús Panameño García; José Alberto Loyola; Maira Roxana García; Arístides Ventura Soriano; Julia Maribel Ruíz Morales; José Elías Martínez Cortez; José Mauricio Palomo Velasco; Juan Gualberto Araujo Cardoza; Alma Morena Marisol Rivas; Francisco Alberto Mejía Miranda; César Elías Romero Hernández; Ada Lisset Ramírez; Jorge Adalberto Franco Hernández; Santos Pablo Osegueda Ayala, and other cases in which the bodies could not be identified.

44. The ONUSAL Human Rights Division made inquiries into the complaints of extrajudicial executions referred to in the preceding paragraph and concluded that the cases of Juan Carlos García Panameño, José Mauricio Palomo Velasco, Manuel de Jesús Panameño García, Juan Gualberto Araujo Cardoza, Jorge Adalberto Franco Hernández and Santos Pablo Osegueda Ayala bear the stamp of organized crimes in which one factor is the political motivation.

45. The seventh report by the Director of the ONUSAL Human Rights Division speaks of the Division's inquiries into the killing of José Mauricio Martínez, Fredy Fernando Torres Portillo, José Alberto Delgado Monyola, Ada Lisset Ramírez, César Romero Hernández, Alma Morena Marisol Rivas, Vicente Reyes Correa, Franco Hernández, Jorge Adalberto Osequeda Ayala, Santos Pablo, Guillermo Girón, Juan Carlos García Panameño and Manuel de Jesús Panameño García, as well as killings in the community of La Fosa. 41/

46. In his eighth report, the Director of the ONUSAL Human Rights Division said that the Division had received 43 complaints of extrajudicial or arbitrary executions during the period May-July 1993, which was a 30 per cent increase over the preceding period. 42/ In some instances the bodies showed signs of violence that went beyond intent to kill. 43/ The body of Carlos Aurelio Pérez Durán was found with the thumbs tied with a nylon cord and three shots but no exit wounds. 44/ The body of Saúl Ramón Marroquín Lovo was found with the fists bound with a cord and two gunshot wounds. 45/ The Director of the ONUSAL Human Rights Division explained that these crimes showed features typical of the way the death squads operated in El Salvador during the previous decade. 46/ Moreover, active verification of the complaints received by the Division confirmed the fact that the deaths of Santos Martínez Pérez, Héctor Manuel Contreras, José Buenaventura Vásquez, Angel Mendoza Villatoro and Héctor David Segovia Verillas were arbitrary. 47/ In the case of Santos Martínez Pérez, who had died on 20 May 1993, it was reported that, despite the arrest warrant issued against National Police Officer Alberto Ponce Zúñiga, the police had not brought him before the courts. 48/

47. The Independent Expert was informed that, during the period August-October 1993, the ONUSAL Human Rights Division found a total of 36 complaints of extrajudicial executions admissible and said that, from a qualitative standpoint, there had been a serious deterioration in the situation in view of the selective basis for the killings, the considerable increase in cases with evidence of political motivation, the methods used and the presence of disturbing signs in the procedures for investigation. The end product of the complaints about arbitrary executions is usually impunity, either because the guilty parties are not identified or, if they are identified, because they are not actually arrested. The cases of Francisco García Grande and Oscar Grimaldi are typical, for the guilty persons were identified, but not arrested. In the latter case, the Commission for the Investigation of Criminal Acts reported that it had not proceeded to arrest the guilty person because no warrant had been issued. The arrest warrant reached the Commission's offices on 25 October 1993. The Commissioner told ONUSAL that it would make the arrest the next day, in other words, 26 October: the presumed killer was shot to death on the night of 25-26 October. His death again led to a situation of impunity.

48. Oscar Grimaldi, killed on 18 August 1993, was a member of the FMLN and connected with the logistical work of the Fuerzas Populares de Liberación (People's Liberation Forces (FPL)). Angel Alfaro Henríquez, killed on 4 September 1993, was the FMLN representative in Chilamas, canton of San Francisco El Jiote, municipality of Zaragoza, Department of La Libertad. A witness says that he was killed by a group of men in military uniform, including a military policeman from the La Libertad port. José Santos Vásquez, killed on 14 September 1993 by five armed individuals in uniform, was a member of the FMLN in Acajutla; from the judicial inquiry and the verifications by ONUSAL, it can be presumed that he was executed by members of the National Police. Francisco Veliz Castellanos, killed in San Salvador on 25 October 1993, was a member of the FMLN National Council, candidate for the post of alternate deputy and administrator of the Salvadorian Peace and Democracy Association.

49. Other killings during the August-October 1993 period include those of the judge of the First Criminal Court of San Salvador, Francisco Arturo Pleitez Lemus, on 3 September 1993; Sebastián Araniva Salamanca, an alternate municipal officer in Chinameca and a member of the Nationalist Republic Alliance (ARENA), shot down on 2 November 1993 by five heavily armed individuals, two of them wearing military uniform and one bearing the insignia of the Third Brigade, stationed in San Miguel; Celestino Antonio Cerna Linares, former mayor of Candelaria de la Frontera and a member of the ARENA Executive Committee in that town, on 13 November 1993; and Marvin Alexis García Urbina, on 22 November 1993.

50. In this serious background of violence, on 30 October 1993, the murder took place of Eleno Castro Guevara, the FMLN land transfer programme officer and leader of the FMLN and former ERP commander. While he was on his way from San Salvador to Usulután to attend a meeting to discuss the land issue, his vehicle was crashed into by another heading in the same direction. Some minors and other witnesses close by said that there was an argument between the occupants of the two vehicles. According to the testimony, while Castro was taking down the registration number of the vehicle that ran into his, he

was shot three times. The owner of the other vehicle, Marina Isabel García de Rivas, told the judge that, while she was driving her vehicle alone, she was stopped by two men who got in and started to follow the vehicle driven by the victim. These individuals caused the collision and the subsequent incident and then one of them shot Castro.

51. In Press Release No. 235, issued on 23 December 1993, the ONUSAL Human Rights Division reported that the findings at the end of the first phase of the process of active verification show that the killing was the result of an argument caused by a car crash and that the person accompanying the woman driving the vehicle in question and the actual perpetrator of the killing was allegedly her brother. The driver has been arrested, while the search for the person concerned continues. 49/ ONUSAL's active verification coincides with the inquiries by the Commission for the Investigation of Criminal Acts and the National Civil Police, together with the Office of the Attorney-General of the Republic and the bodies whose advice was requested by the Government of El Salvador, the FBI, Scotland Yard, ICITAP and the Spanish Police. 50/ This conclusion was based on technically processed evidence: the testimony of eyewitnesses; physical and chemical analysis of the victim's shirt; blood tests and ballistic tests of the two bullets taken from the dead body. 51/ ONUSAL announced that it will continue to keep watch on the case during the court proceedings.

2. Attempted extrajudicial or arbitrary executions

52. The reports by the Director of the ONUSAL Human Rights Division also speak of various cases of attempted extrajudicial or arbitrary executions. For example, they mention the cases of Eduardo Pineda Valenzuela, Assistant Counsel for Human Rights; José Alvaro Henríquez Quijada, former FMLN combatant; Tomás Reyes Martínez Ramos, member of the FMLN South-Eastern Reconstruction Committee; Pablo Parada Andino, a member of the FMLN known as "Commander Goyo"; 52/ Gregorio Mejía Espinoza, local secretary of the Movimiento Popular Social Cristiano, who was kidnapped and tortured; 53/ Héctor Ricardo Silva, a member of parliament for Convergencia Democrática; Pedro Antonio Nolasco Guandigue; Carlos Alberto Hernández Soriano, a Ministry of Health official said to be a member of the FMLN; 54/ José Gabriel Quintanilla, FMLN coordinator for the municipality of San Jorge, Department of San Miguel; Humberto Antonio Solórzano Cerén, member of the executive of the Association of Demobilized Members of the Armed Forces (ADEFAES); Osmín Machado and David Gilberto Vásquez Cea. Attempted extrajudicial or arbitrary executions, like acts which fail to cause the death of the victim, are a phenomenon that can be ranked as extrajudicial executions and, in this respect, are part of a situation that is a constant threat to the right to life.

3. Death threats

53. In 1993, there was still a significant number of death threats in El Salvador, mostly for political reasons. Especially significant were the threats issued by the Frente Revolucionario Salvadoreño, the Movimiento Cívico El Salvador Libre, Ejército Salvadoreño Anticomunista, the Brigada Maximiliano Hernández Martínez and the Angeles de la Muerte Squad, sometimes in paid notices in the press and spots on the radio.

54. Death threats were made against, among others, Alirio Montes López, a member of the Fuerzas Populares de Liberación (FPL); the leaders of Salvadorian Telecommunications Workers Association (ASTTEL); the members of ONUSAL; 55/ Leonardo Hidalgo, the General Secretary of the Movimiento Comunal Salvadoreño and a member of the FMLN executive in Ilopango; 56/ Severiano Fuentes Fuentes, former combatant of the Ejercito Revolucionario del Pueblo; Francisco Nicolás Meléndez, President of the Executive Board of Demobilized Members of the Armed Forces, 57/ and José Antonio Cornejo, the FMLN candidate for mayor of San Juan Nonualco.

55. Most death threats have not been properly investigated by the authorities. In his sixth report, the Director of the ONUSAL Human Rights Division said that he had informed the Minister of Defence of the complaints received, urging him to take the necessary steps to ensure the safety of the persons threatened and to identify the members of the groups making the threats, as well as the persons responsible for the campaigns of intimidation in the media. No reply whatsoever was received. 58/ In his seventh report, he said that, in most cases, the complaints are not investigated, so that the responsibility of the State was incurred by acts of omission. 59/ An increase in the number of death threats has been detected and this is attributed to the start of the electoral campaign. The Independent Expert therefore calls for the adoption of urgent measures to safeguard the lives and physical integrity of the candidates in an electoral climate of respect for the law.

56. The magnitude of the violations of the right to life is such that it involves a serious step backwards in the human rights situation in El Salvador which includes reactivation of the illegal armed groups known as the death squads. Accordingly, the Government adopted a number of decisions, arranging for each case to be investigated in order to determine the facts and punish the guilty. One of the decisions was to ask for cooperation in the inquiries from the police in Spain, the United States of America and the United Kingdom. Accordingly, on 4 November 1993 the Inter-Agency Investigation Group was set up, consisting of representatives of the Office of the Attorney-General of the Republic, the National Civil Police (PNC), the State Intelligence Office (OIE), the Commission for the Investigation of Criminal Acts, the Police Division and the Human Rights Division of ONUSAL and the Criminal Investigation Support Programme of the United States of America (ICITAP). The Inter-Agency Investigation Group is advised by the FBI, Scotland Yard and the Spanish Police.

57. It should also be pointed out that, on 8 December 1993, the Joint Group for the Investigation of Illegal Armed Groups was officially set up, further to an initiative by the Secretary-General, with the support of the Security Council. From the outset, President Cristiani's Government was highly receptive to the Secretary-General's initiative and displayed its readiness to set up the Joint Group. One hundred cases from the ONUSAL records have been identified for examination by the Joint Group's support personnel. The Independent Expert hopes that the international community will make a financial contribution to the operation of the Group.

C. Enforced or involuntary disappearances

58. There were no enforced or involuntary disappearances in El Salvador in 1993, although acts of ordinary violence did include a steady increase in the number of kidnappings.

59. The Independent Expert was informed that the Commission on Human Rights' Working Group on Enforced or Involuntary Disappearances has transmitted to the Government of El Salvador a total of 2,638 cases in recent years, including 2,259 which have not been properly cleared up.

D. Torture and other cruel, inhuman or degrading treatment

60. The Independent Expert would point out that torture is not a massive or systematic practice in El Salvador. However, active verification by the ONUSAL Human Rights Division has ascertained the following cases: José Noé Barías Galicia was tortured on 4 February 1993 by soldiers of Military Detachment No. 5 to get him to confess to a robbery on the Costa Azul beach, Acajutla, Department of Ahuachapán; 60/ Gregorio Mejía, a member of the Convergencia Democrática party, was physically and mentally tortured by those who apprehended him on 23 May 1993 and he was questioned about his political activities and the tactics his party would use if it lost the next elections; Ramón Oscar Orlando, 14 years of age, was tortured on 3 June 1993 by the National Police in San Miguel; 61/ Manuel de Jesús Hernández was tortured by the National Police in San Miguel on 17 August 1993; Carlos Alberto Durán Córdoba and other prisoners were tortured by staff of the Mariona Prison; and Oscar Antonio Salguero was tortured by members of the new National Civil Police on 22 October 1993.

61. These cases of torture have still gone unpunished. A particularly serious case was that of Gregorio Mejía, who was hooded, punched and tortured with an instrument which produced burns, especially on the thorax. The questions by his interrogators, about his political activities revealed a detailed knowledge of his personal background. After several hours of torture, he underwent a mock execution. 62/

62. The ONUSAL Human Rights Division also found that the following persons had suffered cruel, inhuman or degrading treatment: Luis Armando Menjívar García, by members of the National Police in the Department of Santa Ana; Marco Tulio Rodríguez, also by members of the National Police in the Department of Santa Ana; Walter Leonidas Bonilla Meléndez, by members of the Municipal Police in San Salvador; Héctor Antonio Guevara Arana, by members of the National Police; 63/ Miguel Angel Molina Rosa, by members of the National Police in Soyapango; Nelson Hernán Cruz, by members of the National Police in Ciudad Arce, Department of La Libertad; Julio Morales Martínez, a member of the FMLN, by the Municipal Police in Armenia, Department of Sonsonate; 64/ Miguel Angel Cardona Gómez, by staff of the Santa Ana Prison; Luis Alonso Hernández García, by members of the Municipal Police in Santa Ana; Marlon Giovanni Hernández Campos, by members of the National Police in Lolotique. 65/

63. In some cases, cruel, inhuman or degrading treatment or excessive use of force by the police, caused deaths. Pedro Antonio Santos López died on 7 November 1992 as a result of ill-treatment at the National Police station in Soyapango. Roberto Vásquez died on 29 October 1992 as a result of excessive force used by National Police detectives who were trying to arrest him. 66/

64. These cases reveal a serious problem of abuse of authority by members of the National Police and the Municipal Police, which the political, judicial and police authorities have not properly faced. The climate of insecurity because of the increase in crime makes the adoption of the requisite measures even more difficult. Neither the judiciary nor the Office of the Attorney-General of the Republic has adopted such measures, thereby creating the impression of an atmosphere of toleration and of impunity so far as torture and ill-treatment are concerned. The use of force by members of the police should be made subject to clear rules establishing appropriate ways and means to be utilized only when necessary and only in proportion to the seriousness of the criminal act. The deployment of the National Civil Police throughout El Salvador can reasonably be expected to bring about a decline in the cases of torture and cruel, inhuman or degrading treatment.

E. Arbitrary detention

65. Arbitrary arrests are taking place in such numbers as to constitute abuse of authority that is not being properly penalized. In the period August-October 1993, there were 68 arbitrary detentions and a smaller number of detentions for minor offences. However, these figures do not show the true dimension of the problem, for, in most instances, the population does not report arbitrary detentions, either because it distrusts the system of administering justice or fears reprisals. This is a serious obstacle to the possibility of overall success in ONUSAL's efforts to cooperate with the National Civil Police.

66. ONUSAL continues to cooperate with the Salvadorian authorities to bring about the elimination of detentions for minor offences, which constitute a systematic and widespread practice. The ONUSAL Human Rights Division set up a contact group with the National Police to find solutions to the problems that occur, pending a reform of the old legislation still in force, so as to bring the law into line with the provisions of the Constitution. In this context of cooperation, a police instruction was issued to reduce the number of arbitrary detentions. The Independent Expert should none the less point out that there is no formal initiative to amend the 1886 Police Act as far as detentions for minor offences are concerned and that the National Police recently issued a new instruction which broadens its powers.

F. Administration of justice and right to due process of law

67. Quite a few legislative proposals which are part of the judicial reform provided for by the Peace Agreements and others which derive from the recommendations of the Commission on the Truth and the ONUSAL Human Rights Division have still not been adopted. However, the Government has submitted preliminary legislative drafts to the Legislative Assembly relating to the reform of the Code of Penal Procedure, the repeal of the Imminent Danger Act

and the abolition of extrajudicial confession. The President of the Supreme Court of Justice, for his part, has submitted to the Legislative Assembly draft amendments to the Judicial Organization Act and the National Council of the Judiciary Act.

68. The Legislative Assembly adopted the reforms to penal procedure proposed by the Ministry of Justice with regard to the rights of accused persons and abolished the requirement that lower court judges must consult with judges of higher courts. In October 1993, the Ministry of Justice submitted six bills to the Legislative Assembly to strengthen guarantees of due process of law through the invalidation of extrajudicial confessions and the amendment of the Penal Code and the Code of Penal Procedure. This set of bills also includes a proposal to repeal the Imminent Danger Act, which is incompatible with human rights recognized in international instruments. Despite these legislative bills, which gererally strengthen the right to procedural guarantees, violations of due process of law continue to be practised systematically.

69. The Government has submitted for national debate a bill amending the habeas corpus legislation. The bill does not, however, ensure unimpeded access by the persons concerned to the competent judicial bodies, which are, at present, only the Constitutional Division of the Supreme Court and the courts of second instance. No legislative proposals have been made on the remedy of amparo, despite the recommendation of the Commission on the Truth.

70. In this context, a further improvement is that the new Public Defenders Act and the amendment of the Act on the Organization of the Public Prosecutor's Office in connection with the organization of the defence of the accused have reduced the number of cases which extrajudicial confession is admitted as incriminating evidence.

71. The administrative functions of the Supreme Court of Justice and its President have not been decentralized so that they may devote themselves more fully to their jurisdictional functions and no steps have been taken to amend the Judicial Organization Act.

72. The Independent Expert has been informed that, in practice, the Office of the National Counsel for the Defence of Human Rights does not have direct access to the information system of the Supreme Court of Justice on detainees. As a result, the Office of the National Counsel has begun to set up its own detainee registration system using international cooperation resources.

G. Political rights

73. The March 1994 general elections are the first peace-time elections. This is also the first time that people will be voting freely throughout the country because, during the armed conflict, the FMLN sabotaged the elections, including voter registration, in conflict zones. Quite apart from all the controversies and now that all kinds of past disputes have been settled, there is a clear perception that all Salvadorians are now prepared to play by the rules of the democratic game in choosing their leaders, that these rules will be applied cleanly and that the results achieved will be respected.

74. The organization of the electoral process involved many problems. The first and most immediate problem was the preparation of a new electoral register which would include the hundreds of thousands of voters who had not registered to vote because they lived in conflict zones or were displaced persons or refugees. An obstacle of some significance for the achievement of this objective is that many of the persons who are in this situation have no documentation and that, during the war, many registry office files were destroyed. The restructuring of the electoral register thus had to take place in two stages. The first was that of "validation", i.e. applying for inclusion in the electoral register and verification and acceptance of the documentation submitted; the second was called "card issue", which involved issuing the documentation that accredited the voter as such.

75. At the start of the validation process, there were many complaints from opposition sectors about the slow pace of the operation. Later, however, with the support of the ONUSAL Electoral Division and independent bodies such as the Centre for Electoral Training and Promotion (CAPEL), substantial progress was made and, although there are still opposition complaints that communities of repatriated persons have not been able to be included in the register, the fact is that, in terms of figures, the number of new voters validated as such may be over 700,000, which is quite a high proportion if account is taken of the fact that, previously, the electorate consisted of some 1,900,000 voters. However, at the time of writing of this report, some 80,000 applications for inclusion in the electoral register still had to be accepted as valid and this figure might be critical if the election results are close. In any case, if the number of voters accepted for inclusion in the register is to be final in practice, the next stage has to be completed satisfactorily and each registered voter has to be able to obtain the documentation accrediting him as such and enabling him to vote. The Independent Expert stresses how important it is for all Salvadorians with the right to vote to be able to exercise this right. Participation is not democratic unless it is available to everyone on an equal footing. The restructuring of the electoral register to make it genuinely universal is an indispensable step in the process of the reunification of the Salvadorian family.

76. The Independent Expert was informed that there had been some problems with the issue of voters' cards in various districts of the Departments of Chalatenango, La Libertad, La Paz, San Vicente and Usulután and that there are towns, composed mainly of communities of former refugees and displaced persons and settlements of ex-combatants, where no voters' cards had been issued.

77. When this report is formally submitted to the Commission, there will be only a few weeks before the date of the elections. It is the Independent Expert's strongest hope that the election campaign will continue to be conducted on terms of public spiritedness and excellence that are in keeping with the climate of national understanding created by the Peace Agreements. It is essential that the campaign and, above all, the voting, counting and proclamation of the results should be transparent and acceptable to all and that the composition of the powers which will govern during the next constitutional term should be seen, inside and outside the country, as the clearcut and unquestionable result of the will of the Salvadorian people. This depends in the first place on how effective the Supreme Electoral Tribunal is in organizing and monitoring the process, but also on the attitude

of the candidates, especially those who do not obtain the support of the electorate, which must be noble and generous in recognizing the results of a process with the characteristics of honesty that have been described.

H. Economic, social and cultural rights

78. As stated by the Secretary-General in his report to the General Assembly on assistance for the reconstruction and development of El Salvador, 67/ El Salvador has accumulated a significant social debt. Two thirds of the population is living in poverty, of whom one third in extreme poverty. The infant mortality rate is 56 per thousand, 14 points higher than the average for Latin America. Illiteracy stands at 30 per cent and there is a shortage of 500,000 housing units. If the personal and physical losses that occurred during the war are added to this picture, it may be seen how high a priority national reconstruction is.

79. The first phase of the National Reconstruction Plan focused as a matter of priority on the people hardest hit by the conflict. According to the above-mentioned report of the Secretary-General, this phase has been quite successful, but it has encountered problems created primarily by differences between the central Government, local authorities, certain non-governmental organizations and the FMLN on important issues such as the allocation of resources to physical reconstruction and to other social projects; the participation of local communities in decision-making; and the distribution and financing of land in former conflict zones.

80. The Government submitted the financial requirements to the international community for national reconstruction and to pay for the peace process. They amount to $1,533 million to be spent over four years. The breakdown of expenditures may be seen in detail in the above-mentioned report of the Secretary-General to the General Assembly. This is an extraordinary opportunity for the international community, especially the wealthy nations, to make a contribution and provide support to a people which wants to live in peace and democracy.

81. As stated in previous reports, the implementation of the agreements concerning land is one of the trickiest problems that has arisen during the peace process. This issue is indissolubly linked with the causes of the armed conflict that swept the country and must be resolved if social justice is to be done and the country's stability ensured.

82. On 13 October 1992, the Secretary-General submitted to both parties a proposed solution to the land issue, which they rapidly accepted. The proposal provides that the total number of beneficiaries should not exceed 47,500, consisting of 15,000 ex-combatants from the Armed Forces, 7,500 FMLN ex-combatants and approximately 25,000 landholders in the former conflict zones. The proposal establishes a three-phase programme for the provision of land to ex-combatants on both sides and to current landholders. In accordance with the Chapultepec Agreement, current landholders will not be evicted from the properties they hold.

83. However, there have been considerable delays in the implementation of the programme, not only because of the lack of resources, since some are available, but also because of red tape and complications of various kinds. At the time of writing of this report, according to the information obtained from ONUSAL, land had been transferred to only about 15 per cent of the possible beneficiaries.

84. This is a disturbing development, not only in terms of delays in the implementation of the Agreements, but also because of its social impact. There is, on the one hand, the impatience of the potential beneficiaries, which may lead to frustration and give rise to problems of various kinds, but there is also the impatience of the owners of the property in question, who have not been paid and whose estates have not been vacated. All this involves risks of social violence that should be cut short immediately by speeding up the implementation of the programme as much as possible.

85. In February 1993, the representatives of Government, business and labour in the Forum for Economic and Social Consultation jointly recognized the principle of the right of workers to associate. After a period during which its activities were held up for four months, the Forum began its consideration on 25 August 1993 of proposals made by experts of the International Labour Organisation on the amendment of the Labour Code. Since 25 October 1993, the parties have been considering collective bargaining rights and trade union freedom. In his report to the Security Council of 23 November 1993, the Secretary-General reported that, as a result of the discussions, the parties agreed to remove restrictions on the unionization of rural workers and on the creation of a Labour Council within the Ministry of Labour which will institutionalize consultation on labour issues. Unfortunately, the business sector decided to suspend its participation in the Forum as of 20 November 1993. 68/

86. The Independent Expert received information that the process of the granting and recognition of legal personality to associations and trade unions began in late 1993.

I. Situation of children

87. The Committee on the Rights of the Child considered the initial report of El Salvador at meetings held on 27 and 28 September 1993 and adopted its concluding observations on 8 October 1993. 69/ In that document, the Committee noted, inter alia, that budget restrictions affecting social programmes have been detrimental to the protection of the rights of children; 70/ drew attention to the lack of coordination between public and private bodies and organizations dealing with the rights of the child; 71/ and expressed concern at the concept of "children in irregular situations" in Salvadorian law, as well as at the possible applicability of penal law to such children. 72/ The provisions relating to the minimum age for marriage, employment, military service and testimony before a court do not sufficiently take into consideration the principles of the best interests of the child and non-discrimination. 73/

88. The Committee on the Rights of the Child expressed concern about widespread discriminatory attitudes towards girls and disabled children and stated that it was alarmed at the large number of children who have been abandoned, displaced or have become orphans as a result of the armed conflict, as well as those who, in order to survive, are forced to live and work in the street. 74/ It noted with concern the lack of training of professional groups working with poor children. 75/

89. The Committee recommended that urgent measures should be adopted for the protection of children belonging to vulnerable groups, in particular displaced and refugee children, disabled and homeless children, as well as children subject to abuse or violence within the family. 76/

J. Situation of women

90. El Salvador ratified the Convention on the Elimination of All Forms of Discrimination against Women in June 1981, a matter of particular importance in a country where women account for 52.9 per cent of the total population. The Independent Expert received information from non-governmental sources stating that, in addition to having suffered together with the rest of the population as a result of the worsening situation with regard to the enjoyment of human rights and serious violations and abuses, Salvadorian women have had to deal and are dealing with a specific situation of violence affecting them in the home, in the street and at work. The main cause of death among women is linked to childbirth and to medical problems which should, in principle, be preventable and curable, such as infections and haemorrhages during childbirth. Only 52 per cent of births take place with medical assistance and, in rural areas, the figure is as low as 34 per cent. It is reported that the country has only 1,797 beds intended for childbirth in hospitals; that 3 of every 10 pregnant women have severe anaemia and 5 slight anaemia; and that the public health system does not offer services for the detection of cancer of the uterus.

91. According to the information received, the national illiteracy rate among women is 59 per cent and, in the countryside, it goes up to 84 per cent. Only 14 per cent of doctors, 4 per cent of lawyers and 2 per cent of engineers are women.

92. Sixty per cent of households have women as the head of family. However, 61 per cent of women at an economically active age are unemployed. In a survey of 200 families in various social sectors in San Salvador conducted by the National Coordinating Body for Salvadorian Women (CONAMUS), it was discovered that children in 114 homes reported that the father beat the mother.

93. The Act on the Office of the National Counsel for the Defence of Human Rights established the post of Assistant Counsel for the Defence of the Rights of Women. One year after its establishment, the Office of the Assistant Counsel learned that "constant and permanent violations against women include domestic and intra-family violence, sexual abuse, violations of the right to physical and moral integrity, work, property, to be treated with respect and dignity and to equality in administrative and judicial proceedings". In its 1992-1993 Activity Report, the Office of the Assistant

Counsel states that the police, judicial and administrative authorities are not dealing with the problem and that "there is a lack of adequate training guidelines for law enforcement officials to deal with the problem of violence, primarily because the State has failed to take the necessary precautions and places the blame on the person who is ultimately responsible for the violence". 77/

III. APPEAL TO THE GOVERNMENT OF EL SALVADOR AND THE FRENTE FARABUNDO MARTI PARA LA LIBERACION NATIONAL (FMLN) TO CARRY OUT FULLY THE REMAINING AGREEMENTS, TOGETHER WITH THE RECOMMENDATIONS MADE BY ONUSAL AND BY THE AD HOC COMMISSION AND THOSE PRODUCED IN DUE COURSE BY THE COMMISSION ON THE TRUTH

94. The majority of the Agreements continued to be implemented, but there have been some disagreements about the form and timetable agreed on. It is a well-known fact that, in some cases, there have been considerable delays in relation to the original schedule.

A. Office of the National Counsel for the Defence of Human Rights

95. In his preceding reports, the Independent Expert stressed the need to strengthen the capacity for action and credibility of the Office of the National Counsel for the Defence of Human Rights. This body has enough constitutional and legal powers to be able to carry out effective work on the promotion and protection of human rights.

96. The Office of the National Counsel made its presence felt more in 1993 than in the preceding year. It published reports on cases brought to its attention and demonstrated independence from the Government, whose cooperation with it is not evident, and established its own Presidential Commissioner for Human Rights.

97. There is, however, still a long way to go. The Office is still weak and lacks the necessary material and human resources fully to carry out the task entrusted to it. It has also been harshly criticized by non-governmental organizations and, regardless of what their motivations might be, this implies that there is a tragic gap between the Office and these organizations, whose active cooperation is practically indispensable if it is to carry out its task.

B. National Civil Police

98. The training of National Public Security Academy recruits has been taking place at a satisfactory pace. There have, however, been some disagreements about the proportion of FMLN ex-combatants and ex-agents of the National Police to be admitted to the Academy, as well as about the admission of ex-members of other public security bodies disbanded in accordance with the Peace Agreements.

99. The National Civil Police (PNC) has continued to expand. It now covers seven Departments and part of the San Salvador metropolitan area. Work has also started on the deployment of some of PNC's functional divisions, such as the land transport and finance divisions. A matter of concern is

none the less the situation that prevails in the Criminal Investigation and Anti-Narcotics Divisions. As the Independent Expert reported to the Commission in 1993, there had been a project to establish a parallel body to the Criminal Investigation Division, attached to the Office of the Attorney-General of the Republic, to act as a "criminal investigation agency", on the model of the "Commission for the Investigation of Criminal Acts", which is under the control of serving officers of the armed forces and staffed to a large extent by military personnel. The Independent Expert reported at that time that the parties, with ONUSAL support, reached an agreement on this subject on 22 December 1992; the agreement comprises a gradual transition process which will incorporate, subject to evaluation, the staff of the current Commission for the Investigation of Criminal Acts and Anti-Narcotics Commission into the Criminal Investigation and Anti-Narcotics Divisions of the PNC. Unfortunately, he must now express his concern because ONUSAL has not received all the information requested to verify the evaluation of the candidates and has also been unable to verify how such members are being transferred to the PNC. In view of the background and, in particular, the acts and omissions of the so-called Commission for the Investigation of Criminal Acts, which helped to set the stage for impunity, as described in the report of the Commission on the Truth, this situation is rather alarming and revives concern that military influence is being asserted in the PNC.

100. This is not the only risk that there will be changes, at least to some extent, in what the PNC was originally intended to be like. The COPAZ subcommittee, which should, according to the Peace Agreements, be consulted about any relevant decision relating to the organization of the PNC and the deployment of its forces, has not been working. The Inspector General of this body, who will be responsible for monitoring its operations and respect for human rights, has also not been appointed. The PNC thus lacks logistical support. Its equipment is in a precarious state and it has been unable to have the equipment that used to belong to the disbanded public security bodies transferred to it or to obtain a large enough budget. In this connection, although he is fully aware that it is the Government's responsibility to organize and equip the PNC, the Independent Expert strongly urges countries with greater resources to take account of the financial constraints El Salvador faces and of how vital it is for the democratic future of the country to ensure the full development of the model civilian police force worked out in the peace process. This is an appropriate area for fruitful international cooperation.

101. There are some developments that give rise to concern. Although the Constitution provides that the armed forces may be called upon to carry out internal security tasks only in exceptional circumstances when all other means have failed, the Government decided to deploy military units to combat crime and the Independent Expert is unaware that such a decision is based on any legal act that meets the requirements of form and of substance laid down in the Constitution itself. 78/ There is no room for discussion about the increase in ordinary crime or about the particular situation of a country which is building a new police force and has undertaken completely to disband the existing one. However, it is not obvious, as the country's history has shown, that military deployment is the best way of halting the wave of violence. In any event, if the Government considers that conditions exist to invoke the constitutional provision which authorizes it in exceptional

circumstances to use the army for public security purposes, it must avail itself of that provision expressly by means of a legal act which recites the authority on which it is based and is to be communicated to the Legislative Assembly, as the Constitution requires. Not to do so creates doubts about the seriousness of the new constitutional function of the armed forces, which is limited to protecting national sovereignty and territorial integrity.

102. Although the Peace Agreements provide for the gradual reduction of the former National Police, it has increased significantly, partly as a result of the incorporation of members of the Treasury Police and the National Guard, security bodies which were disbanded by the Agreements. In his report to the Security Council of 21 May 1993, the Secretary-General stated that such a development is incompatible with the agreements and contravenes their spirit. The Independent Expert has also been informed that recruits continue to be trained for the former National Police, thus indicating that there is no serious intention to comply with the undertaking to phase out the National Police or with the Organization Act on the National Civil Police, which expressly states that this will be the only armed police force with national jurisdiction. It is worth noting that such developments are taking place at a time when the PNC has been facing the above-mentioned staffing and budget problems. All of this seems to be incompatible with the idea of a new police force that will gradually become stronger while the previous one, which is supposed to be phased out, should be growing smaller and transferring equipment and other resources to the one which will replace it.

C. Judicial system

103. There have been no major changes in the situation and composition of the judicial system, which continues to suffer from the shortcomings and defects examined in detail by the Independent Expert in his earlier reports. The President of the Supreme Court of Justice informed ONUSAL that he is getting ready to prepare legislative drafts with a view to the decentralization and administrative reorganization of the judiciary. This is a welcome initiative, but, even with the best will in the world, it will be difficult to solve the basic problems with mere legal reforms. As stated in previous reports, the structural problem of the judicial system has constitutional roots and its solution depends on the amendment of some articles of the Constitution, as recommended by the Commission on the Truth. 79/

104. The National Council of the Judiciary was elected by consensus and has been working since June 1993. Its operation has given rise to problems, mostly as a result of the fact that internal correlation makes it difficult to form a majority for decisions on certain matters. The Judicial Training School, which is of key importance for the basic long-term solution of the problem of justice and which, according to the Peace Agreements and the National Council of the Judiciary Act, depends on the National Council, is in an unfortunate situation of institutional crisis as a result of a new manifestation of the vertical structure of the judicial system and the excessive concentration of powers in the Supreme Court of Justice. In accordance with the powers vested in it by law, the National Council of the Judiciary proceeded, on the basis of the new Act, to appoint the Director of the School to replace the one who had been appointed by the President of the Supreme Court of Justice under the old system. The official who was replaced

filed a remedy of amparo with the Supreme Court of Justice itself, which ordered that he should be reinstated in the post. In practice, this means that the School is not accountable to the National Council of the Judiciary.

105. The recommendation by the Independent Expert in his preceding report to the Commission that the National Council of the Judiciary Act should be amended to guarantee its independence from government bodies and political parties in accordance with what was agreed in the peace negotiations has still not been accepted. This recommendation was, moreover, also made by the Commission on the Truth. 80/ COPAZ informed ONUSAL that it is about to prepare a draft along these lines.

106. However, on 6 September 1993, the Supreme Court of Justice submitted to the Legislative Assembly draft amendments to the National Council of the Judiciary Act proposing the amendment of articles 11 and 37 of the Act. The draft keeps authority to dismiss members of the National Council within the jurisdiction of the Supreme Court, ignoring the recommendation by the Commission on the Truth that the members of the National Council should be able to be dismissed only by the Legislative Assembly and on specific legal grounds.

107. The Career Judicial Service Act has not been amended along the lines recommended by the Commission on the Truth so that the career judicial service includes only those judges who have demonstrated judicial aptitude, efficiency and concern for human rights and offer every guarantee of independence, judicial discretion, honesty and impartiality in their actions. At the time of writing of this report, the judicial officials named in the report of the Commission on the Truth have also not been removed from their posts. In addition, the evaluation of judges being conducted by the National Council of the Judiciary is facing growing problems, including financial constraints, the lack of trained staff and a petition for the removal of its president.

D. Recommendations of the Ad Hoc Commission

108. In his preceding report to the Commission, 81/ the Independent Expert reproduced what was stated by the Secretary-General to the Security Council in connection with 15 officers who should have been retired, according to the report of the Ad Hoc Commission, but who continued to serve. According to the information available to the Independent Expert, these officials have now retired or at least been removed from their posts in the armed forces. In general, however, the retirements have not been the result of the implementation of the recommendations of the Ad Hoc Commission, but of the fact that the persons concerned retired after completing the required period of active service in the armed forces. In any event, it is a welcome fact that, in practice, none of the officers referred to in the report of the Ad Hoc Commission is still on active service in the armed forces.

E. Recommendations of the Commission on the Truth

109. Under the Mexico Agreements of 27 April 1991, it was decided to establish the Commission on the Truth, a special mechanism to investigate serious acts of violence that have occurred since 1980 and whose impact on society urgently

requires that the public should know the truth. The Secretary-General appointed Mr. Belisario Betancur (Colombia), Mr. Thomas Buergenthal (United States of America) and Mr. Reinaldo Figueredo (Venezuela) as members.

110. The Commission submitted its report on 15 March 1993. The report is a frightening one which, apart from the cases solved individually, reveals how violence and State terrorism were relentlessly carried out against civilian society, directly at times, with acts attributable to military officials on active service, and at times by irregular armed groups or death squads organized by civilians under the protection of the army and responsible for countless disappearances and murders. The armed conflict also increased social violence, to which must be added that carried out by the FMLN, which ordered not only military actions, but also the summary execution of helpless civilians for political reasons. The report sheds light on incidents which had already been reported and were never seriously investigated. Two of them shocked the world: Archbishop Romero's murder by a death squad and the murder of the Jesuit Fathers at Central American University and their employees, which was ordered mainly by the military leaders then serving.

111. The recommendations of the Commission on the Truth, of which there are about 40, came under different headings. Some of them, which are inferred directly from the results of the investigation and must be acted on urgently, are aimed at the immediate removal of factors relating directly to the acts investigated or to the fact that they have not been fully cleared up. Of particular significance are the requests that the officers identified as responsible for the crimes should be discharged and that the members of the Supreme Court should resign. The second group of recommendations seeks to find a solution to some structural problems directly linked to the acts examined by the Commission. The third group relates to institutional reforms to prevent the repetition of such acts. Lastly, the Commission formulated its considerations and recommendations concerning national reconciliation.

112. The report of the Commission on the Truth expressly requests the Independent Expert, "in the report he is to submit to the United Nations Commission on Human Rights pursuant to his mandate and to the extent allowed by that mandate, to make the corresponding evaluation of the implementation of the recommendations of the Commission on the Truth". 82/ In this connection, it should first be pointed out that the above-mentioned resolution 1993/93, in which it was decided to request the Secretary-General to extend for one year the mandate of the Independent Expert, expressly urges the Government of El Salvador and the FMLN to carry out fully, inter alia, "the recommendations made by the United Nations Observer Mission in El Salvador and by the Ad Hoc Commission and those to be produced in due course by the Commission on the Truth". The mandate entrusted to the Independent Expert also includes reporting to the Commission on Human Rights at its fiftieth session on the action taken to give effect to resolution 1993/93. 83/ The request by the Commission on the Truth is thus compatible with and part of the Independent Expert's mandate.

113. However, in view of the complexity and number of the recommendations by the Commission on the Truth, a detailed examination of their implementation would go beyond the limits of this report and the resources available to the Independent Expert. Moreover, ONUSAL made a detailed analysis and constantly

followed up the question, which was the subject of thorough reports by the Secretary-General to the Security Council on 21 May 1993 84/ and, in particular, on 14 October 1993, 85/ to which the corresponding report of ONUSAL is annexed. In general terms, the present report is based on those documents, which state that "some action has been taken on a large number of the recommendations made by the Commission on the Truth", although "In most cases, only partial implementation has been effected as draft legislation is under consideration by government agencies or legislative bodies or because preliminary action is being taken by the Government". 86/ This indicates that the implementation of the recommendations of the Commission on the Truth has, on the whole, not reached a satisfactory level. In his report of 23 November 1993, 87/ the Secretary-General welcomes the submission to the Legislative Assembly of the draft laws referred to in paragraph 68 of this report as a very positive step in the implementation of the recommendations of the Commission. The Secretary-General also noted that there are some outstanding points and they will be commented on briefly below.

114. The first point relates to disqualification from holding public office. In its report, the Commission on the Truth stated its view in the following terms:

> "Under no circumstances would it be advisable to allow persons who committed acts of violence such as those which the Commission has investigated to participate in the running of the State. The Commission therefore believes that the persons referred to in the preceding paragraphs, as well as any others equally implicated in the perpetration of the acts of violence described in this report, including the civilians and members of the FMLN Command named in the findings on individual cases, should be disqualified from holding any public post or office for a period of not less than 10 years, and should be disqualified permanently from any activity related to public security or national defence. While the Commission does not have the power to apply such a provision directly, it does have the power to recommend to the National Commission for the Consolidation of Peace (COPAZ) that it prepare a preliminary legislative draft on this issue, offering proper guarantees in accordance with Salvadorian law, and that it submit such draft to the Legislative Assembly for early approval. It also has the power to recommend to the bodies authorized to make appointments to public office that they refrain from appointing persons referred to above." 88/ (Emphasis added.)

The Secretary-General reported that this recommendation could not be implemented "as it was at variance with fundamental provisions of the Constitution'. 89/ In addition, there seemed to be a consensus in COPAZ that it should not be implemented and the Secretary-General therefore stated in his report that "While insisting on the signatories' obligation to honour their commitments under the Accords ... I would be prepared to recommend to the Security Council that non-implementation of those provisions should not be regarded as a violation of the Accords". 90/

115. In fact, this conclusion does not contradict the recommendation of the Commission on the Truth, as quoted above, because, when the Commission expressly stated that it did not have the power to apply such a provision

directly, it referred the matter to COPAZ to implement it in accordance with Salvadorian law, probably bearing in mind that, in comparative criminal law, criminal legislation frequently makes disqualification from holding public office an accessory penalty for some particularly serious offences. However, if COPAZ is of the view that such a thing is not possible in Salvadorian law, the Commission's recommendation would be partially unimplementable; in other words, it could not be imposed as a standard or general measure. There are none the less two comments that should be made. In the first place, this particular feature of Salvadorian law in no way detracts from the moral authority of the Commission's recommendation that: "Under no circumstances would it be advisable to allow persons who committed acts of violence such as those which the Commission has investigated to participate in the running of the State". Secondly, the conclusion of a formal legal nature reached in connection with the general prohibition also does not affect the recommendation by the Commission that the bodies authorized to make appointments to public office should refrain from appointing the persons in the situation referred to.

116. In this connection, it must be noted as a setback for the recommendations of the Commission on the Truth that the President of the Supreme Court of Justice, who is mentioned by name several times in the Commission's report, was proposed by the Government of El Salvador and elected by the General Assembly of the Organization of American States (OAS) as a member of the Inter-American Juridical Committee, which is one of the permanent bodies of that regional organization. As stated by ONUSAL in the report transmitted by the Secretary-General to the Security Council, the nomination seems inconsistent "with the spirit, if not the letter, of the Commission's recommendation". 91/

117. Another of the points to which the Secretary-General drew attention in the above-mentioned report to the Security Council on the question and which the Government would have problems complying with relates to the constitutional amendments recommended by the Commission on the Truth. Such problems would be the result of the fact that, according to the Constitution of El Salvador, proposals to amend the Constitution are the sole prerogative of the deputies of the Legislative Assembly, and the Government does not have any power in this regard.

118. Attention should be drawn to the areas that would be covered by such amendments. According to the report of the Commission on the Truth, the first group relates to reforms to the structure of the judicial system designed to overcome "the tremendous concentration of functions in the Supreme Court of Justice, and in its President in particular, as the body which heads the judiciary". 92/ It is thus recommended that "Judges should not be appointed and removed by the Supreme Court of Justice, but by an independent National Council of the Judiciary". 93/ It is also recommended that "The functions of granting authorization to practise as a lawyer or notary and suspending or penalizing members of those professions should be attributed to a special independent body and not to the Supreme Court of Justice". 94/ This is a matter of key importance for the consolidation of the rule of law and an effective system for the defence of the rights of all citizens. The inappropriateness of the vertical structure of the judicial system and the exaggerated political and administrative power of the Supreme

Court of Justice were dealt with at some length in the reports which the Independent Expert submitted to the General Assembly in 1992 95/ and to the Commission on Human Rights in 1993. 96/ The latter report states, in particular:

> "It is clear that the vertical structure of the administration of justice hampers the intellectual freedom of the judge and the independence of lawyers. This is a problem to which there is no easy short-term solution, since it is connected with the constitutional powers of the Supreme Court of Justice. Secondary legislation may regulate those powers and set certain limits and conditions on their exercise, but it cannot leave them without effect. This is a point that the Salvadorians will have to take into account when they take a sovereign decision to make a further amendment of their Constitution". 97/ (Emphasis added.)

119. If account is also taken of the fact that practically none of the recommendations by the Commission on the Truth on the judicial system has been implemented, it may be concluded that, in such a key area for guaranteeing the consolidation of the rule of law and preventing impunity, no real progress has been made, despite repeated and concordant national and international observations on the deficiencies of the judicial system.

120. The other point with regard to the constitutional amendments recommended by the Commission on the Truth in its report relates to the effectiveness of the remedies of amparo and habeas corpus, 98/ which are the very essence of full guarantees of human rights. This recommendation is fully in keeping with the San José Agreement of 26 July 1990, in which the parties agreed that "the fullest possible support should be given to ensuring the effectiveness of the remedies of amparo and habeas corpus". 99/ As stated above (para. 69), the habeas corpus bill drafted by the Government is still not satisfactory.

121. As may be seen, these are not simply adjectival issues, but, rather, basic chapters already referred to as being among those that would urgently require reforms in order to consolidate democratic advances. Moreover, since reforms to the Salvadorian Constitution have to be adopted by a legislature and ratified by the one elected for the subsequent period, if the recommendations made are not accepted and adopted by this legislature, whose term will end on 30 April 1994, it will be necessary to wait until at least 1997 to have any hope that such a reform will enter into force. This issue is not only very important, but must also be dealt with urgently. Without forgetting that the executive branch has no jurisdiction to initiate constitutional reform, it should be borne in mind that, in referring to the "addressees" of its recommendations, the Commission on the Truth stated that "where they require action or initiatives by State organs other than the executive branch, the Government's undertaking means that it must take the necessary action and initiatives to ensure that the recommendations are put into practice by the appropriate State machinery". 100/

122. The last point to which the Secretary-General refers in the above-mentioned report relates to recognition of the compulsory jurisdiction of the Inter-American Court of Human Rights, which may take place, according to the American Convention on Human Rights, to which El Salvador is a party,

by accession to the optional provision contained in article 62 of that treaty. The Government is said to be considering the possibility of acceding to various international conventions on human rights, but rules out recognition of the compulsory jurisdiction of the Court, which is an autonomous judicial body of the Inter-American system whose volume of work is still not nearly as great as that of its European counterpart, but has been increasing significantly. To date, the compulsory jurisdiction of the Court has been recognized by the following American States: Argentina, Bolivia, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela. It is worth emphasizing that the 16 recognitions include those of all the Central American countries which are parties to the Convention, except El Salvador.

123. The Court is an invaluable instrument for establishing a legal framework for the international protection of human rights and ensuring full respect for the American Convention. It should be seen not as a means of "punishing" the State or undermining a Government's prestige, but as an instrument by which the State may offer the persons under its jurisdiction an additional means of protecting their rights. This type of mechanism is an example of the perfectibility of democracy, which recognizes the need for additional means of evaluating its own institutions for the benefit of citizens. Moreover, the Court not only gives individuals a legal remedy which is exercised through the Inter-American Commission on Human Rights, but also offers the State a court of appeal when it is of the opinion that the conclusions and recommendations reached by the Inter-American Commission on Human Rights in the consideration of a particular case are contrary to the facts or the law.

124. Nothing in the Constitution of El Salvador stands in the way of recognition of the compulsory jurisdiction of the Court. On the contrary, what is expressly prohibited in article 146 is the conclusion or ratification of treaties which in any way damage or impair "the fundamental rights and guarantees of the individual". 101/ The Government should once again be strongly urged to give effect, as is its duty, to the corresponding recommendation of the Commission on the Truth, thereby helping not only to strengthen the means available to Salvadorian citizens for the protection of their rights, but also to shore up the Inter-American system of human rights.

125. Lastly, the Independent Expert wishes to point out that, although a monument to peace has been built, no reparation or material compensation has been granted to the relatives of the victims, as the Commission on the Truth recommended and in accordance with a principle of law that is universally recognized, especially by international human rights instruments.

F. FMLN weapons

126. In mid-1993, when an explosion occurred in Managua, Nicaragua, public opinion was astonished to learn about the existence of clandestine FMLN arsenals. This is a very serious development which involves a gross and premeditated violation of what was promised and endangers the credibility of the process. It also showed a lack of consideration for the Secretary-General, who had guaranteed the termination and dismounting of the

FMLN military apparatus in good faith and with his word. There is no doubt that this discovery seriously undermined the moral authority and credibility of the FMLN.

127. In their explanations to the Secretary-General about this incident, the FMLN leaders said that it was the result of their profound mistrust of the armed forces and the seriousness of the armed forces' commitment to respect the Agreements. Mistrust between parties which have been fighting for years is understandable, but it in no way justifies failure to give effect to what was agreed. In the implementation of the Peace Agreements, the idea of reciprocity must be eliminated. When failure by one of the parties to meet a commitment may be allowed to become the basis for the same failure by the other party, we shall be starting the type of escalation on which the Salvadorian tragedy was built. It is inadmissible to claim a right to reciprocity in non-compliance with agreements relating directly to the integrity and dignity of the individual. Fortunately, as the Secretary-General rightly pointed out in the above-mentioned report to the Security Council, both parties maintained the best possible attitude after the facts were established. President Cristiani stayed as calm as was warranted in the circumstances and the FMLN leadership took responsibility for the arsenals, offering explanations and excuses to the Secretary-General and stating that the clandestine arsenals would be destroyed under ONUSAL verification.

G. International verification

128. Some sectors of Salvadorian society consider that there has been an exaggerated international presence in the recent past. The Independent Expert is aware of the problem and does not rule out the possibility that it may have had some influence in giving rise to the difficulties that prevented him from visiting the country during the period covered by the present report. The Secretary-General and his representative were intermediaries and active participants in the peace negotiations. The United Nations has been present in all mechanisms for the verification and support of the process, which have included human rights, military, police, economic-social and electoral components. The investigation of very serious violations of human rights during the 1980s was entrusted to three distinguished foreign citizens who constituted the Commission on the Truth. All of this was an unprecedented effort at international cooperation in which the United Nations was a channel and a tool in a process designed to bring about peace, national reconciliation, the protection of human rights and the consolidation of democratic values. Such a massive presence may, however, give rise to reactions to society. Most of them can be explained by the fact that the Salvadorian process involves major changes and overcoming a situation in which many privileges were defended by force. It is understandable that the persons affected by these changes should link the loss or weakening of their privileges to United Nations action. It may not entirely be ruled out, however, that some of these reactions, which take the form of signals to the Government with public opinion in mind, are to some extent normal in a process such as the one the country is now going through.

129. This circumstance must nevertheless not make us lose sight of the vital role which the international community's efforts have played in putting an end to the war in El Salvador and guiding the country towards a process designed to build a fully consolidated democratic society. Various attempts to set up peace negotiations failed until the Government of President Cristiani and the FMLN requested the Secretary-General of the United Nations to serve as an intermediary in the process. The bold and untiring efforts of the Secretary-General and his representative were an irreplaceable instrument in the design of the Peace Agreements and in bringing together positions which seemed irreconcilable and on which few persons thought agreement could ever be reached by those who had been waging a bloody civil war for so long. The attention of the countries which made up the Group of Friends of the Secretary-General during the process, the Security Council's constant vigilance and, later, ONUSAL's detailed verification of the implementation of the Peace Agreements were factors without which the process would probably have encountered insurmountable obstacles. It must also not be forgotten that many Salvadorians, who were more or less politically and socially on the sidelines during the war, have had the international presence as a major basis for their security and tranquillity during a transition period which has more than once proved to be bumpy.

130. In his preceding report to the Commission, the Independent Expert stressed that "The international community must also continue to follow closely the human rights situation in El Salvador" because, "Although there has been progress, it is still too early to say that a new, stable and irreversible situation has been achieved, representing a substantial and lasting improvement in the status of human rights". 102/ This statement is still valid and must be emphasized. On the one hand, as has already been stated, there have been disturbing signs of irregular armed groups which have carried out various political attacks, for the investigation of which the participation of international actors has been necessary. On the other hand, it is a well-known fact that many agreements are still in the process of being implemented and that some of them, such as those on compliance with the recommendations of the Commission on the Truth and land issues, have encountered enormous obstacles and resistance that have been difficult to overcome.

131. It should be pointed out in this regard that the so-called transition period will end when the Peace Agreements and the consequences deriving from them have been implemented as a whole and in their basic essentials. The general elections in March 1994 and the takeover by a new Government this year are an event of great importance in the history of the country, since this is the first time that all forces in the Salvadorian political spectrum are taking part freely in a contest of this kind, according to rules of play basically accepted by all. However, the end of President Cristiani's term of office cannot be confused with the end of the transition period.

132. It is to President Cristiani's invaluable historical credit that he has given his encouragement and full support as head of State and commander in chief of the armed forces to the negotiations and the ending of the armed conflict by political means. This fact must, however, not make the agreements look simply like a personal and political undertaking by President Cristiani that will not extend beyond his term of office, firstly, because undertakings

by the head of State are binding not only on him, but also on the State itself, which transcends any Government, and, secondly, because undertakings and tasks assumed by the United Nations, through the Secretary-General, the Security Council and ONUSAL, have been and are with the Republic of El Salvador and not with a particular Government, however good relations might have been with it, and, thirdly, because, quite apart from these formal considerations, the truth is that Salvadorian society as a whole has been linked to the peace process. This process is, as the Independent Expert has already stated, the result of enormous efforts and a moral commitment by all Salvadorians to build a more equitable and democratic society based on solidarity. All political parties, including those to which the presidential candidates who seem to have the greatest number of votes belong, took part in one way or another in the negotiating process and the subsequent implementation of the Agreements. Other sectors of civilian society, such as the Catholic Church, trade union and employers' organizations and various non-governmental organizations also made major contributions to the process. Moreover, the New York Agreement of 25 September 1991 established the National Commission for the Consolidation of Peace (COPAZ), stating that "COPAZ" is a mechanism for the monitoring of and the participation of civilian society in the process of the changes resulting from the negotiations" (para. 1) and providing that "COPAZ shall be dissolved once the implementation of the peace agreements has been completed. Its dissolution shall be decided upon by COPAZ itself, by means of an agreement receiving a favourable vote from at least two thirds of its members" (para. 6 (c)). This will formally end the transition period. According to the New York Agreement, the establishment of COPAZ was also to be confirmed by law in the Legislative Assembly (para. 5) and this is what in fact happened. Thus, in formal political, social, moral and legal terms the peace process is not supposed to be interrupted by the fact that one of its main mentors, President Cristiani, is completing his term of office; rather, it is to continue to be implemented, as provided for in the Agreements, including United Nations verification.

133. The Independent Expert is of the opinion that, in the light of the disturbing facts revealed by the reports of the Director of the ONUSAL Division of Human Rights, security conditions are not yet such as to put an end to United Nations verification of the San José Agreement and the Division should therefore continue its work in the field as appropriate in the prevailing situation for as long as its mandate is to be extended. Moreover, in view of the background and problems involved in setting up a complete system to guarantee human rights, the Independent Expert is of the opinion that the presence of the United Nations in El Salvador for human rights monitoring and assistance should last throughout the entire transition period, with the appropriate arrangements for each stage. In any case, the Independent Expert considers that it is useful for the people and the Government of El Salvador for the Commission on Human Rights to continue to keep a close watch on the Salvadorian process, which, although it has made some progress if the current situation is compared with that existing during the armed conflict and the years before it, continues to show disturbing signs, which have been described in this report.

IV. CONCLUSIONS

134. As the Independent Expert stated in his preceding report, the Peace Agreements are the result of a massive effort by the parties to reach an understanding, an effort that also expressed a profound national aspiration for peace and justice. The form and content of the Agreements are geared not only to ending the armed conflict by political means, but also to the national enterprise of building a new and more democratic society imbued with the spirit of solidarity, in which untrammelled respect for human rights is a fundamental means of State action. The task was not simply to end a war, but to eliminate its causes. The nation is thus offered an extraordinary opportunity for progress. In order to take full advantage of this opportunity, it is imperative that the will which led the parties to reach an understanding and Salvadorian society to encourage them in that objective should be sustained throughout the process of implementation of the Agreements.

135. Unfortunately, the pace of implementation of the Agreements slowed in 1993. All the important steps took place very slowly and the process seems to be losing its initial momentum as the end of President Cristiani's term of office approaches. This is a development that should put all sectors of Salvadorian society on alert. This process is not one that can be brought to a standstill. The choice is between either moving forwards or moving backwards. Looking back at the horrors of the past must be an incentive for not stopping. It is essential to move forward with renewed vigour.

A. Developments in the human rights situation in the country

136. In analysing what happened in 1993, particularly during the second half of the year, it is more obvious that the ending of the conflict would not be enough to establish a climate in which human rights are fully observed and safeguarded, especially when the resources available to civilian society with which to combat violations of these rights are still limited.

137. There are positive signs that continue to be maintained, such as the eradication of enforced or involuntary disappearances. However, many of the signs of progress which were described in last year's report by the Independent Expert have weakened or been reversed. The number of attempts on human life originating in the practice of extrajudicial or arbitrary executions has increased considerably and the death squads are responsible for intimidating threats for political purposes. Worse still, in view of the characteristics of the victims, it is possible to have well-founded suspicions of selective murders committed by criminal organizations. Although torture is not a systematic practice, a larger number of victims was recorded in 1993 and it is not known whether the persons responsible have been punished. Arbitrary detentions continued to be common in 1993, despite the signs of progress which were observed in 1992 and which could not be sustained.

138. The Joint Group for the Investigation of Illegal Armed Groups, which is coordinated by the Director of the ONUSAL Human Rights Division and has President Cristiani's support, was set up to shed light on the attacks attributed to these groups.

139. As has been stressed in this report, the structural deficiencies in the judicial system are both a source of violation of the right to due process and an obstacle to the proper safeguarding of human rights. The public cult of violence has also not been overcome and anonymous publications threatening persons and institutions have continued. The armed conflict continues to affect economic, social and cultural rights and the Agreements reached on them in the peace process are only just beginning to have an impact. The noticeable stagnation of the implementation of the Agreements with regard to land is a source of frustration and tension in various sectors of society. The achievement of substantial progress in this area in the shortest possible time is a prerequisite for justice and social stability.

140. The Independent Expert regrets concluding this report on a less optimistic note than he had hoped and would have liked. In order not to use his own words, he will borrow those which describe the current situation of human rights in the ninth report of the Director of the ONUSAL Human Rights Division: a serious deterioration.

B. Implementation of the Peace Agreements

141. The Office of the National Counsel for the Defence of Human Rights is called upon to play a central role in the promotion and defence of those rights in the future. Priority must be given to supporting and strengthening it at the levels of domestic action and of international cooperation. It is essential for it to improve its relations and work in close contact with non-governmental organizations.

142. The National Civil Police is another of the pillars of the Agreements which bolsters the hope that progress will be made in respect for and the safeguarding of human rights. It is an institution conceived in terms of a truly democratic standard: an exclusively civilian body, separate from the armed forces, whose first function is to protect and safeguard the free exercise of the rights and freedoms of individuals. The National Civil Police must not stray from that notion of a democratic, modern police force, integrated into civilian society, rather than engaged in a confrontation with that society.

143. The organization of the new body reveals some incompatibilities with the contents of the Peace Agreements. In addition to delays in the implementation timetable, there have been disturbing signs of military influence in the police sector. The action by the armed forces in the area of public security took place in 1993 without regard for the requirements of form and of substance provided for in the Constitution. There have been no signs of the actual disbanding of the former National Police, in accordance with the provisions of the Peace Agreements.

144. To date, the reforms have not been sufficient to overcome the verticality which is a structural defect of the Salvadorian judicial system. Appointment and dismissal of judges, authorization to practise as a lawyer and disqualification therefrom are within the competence of the Supreme Court of Justice. The vertical structure of the administration of justice adversely affects the intellectual freedom of the judge and the independence of lawyers.

145. The National Council of the Judiciary Act was not amended, despite the recommendations of the Independent Expert and those formulated later by the Commission on the Truth. The Act contains contradictions in that it defines the Council as an independent body, as provided for in the Peace Agreements, but at the same time makes its members liable to dismissal by the Supreme Court of Justice for reasons which include "just cause", thus robbing the judiciary's proclaimed independence of genuine substance.

146. The discovery of clandestine FMLN arsenals was a serious development that put the peace process to the test. The Independent Expert is confident that the impact of that development within and outside El Salvador and consideration of the effects of such a serious breach will have prompted the FMLN to locate and genuinely destroy all of its weapons.

C. Implementation of the recommendations

147. Most of the recommendations contained in this report will be the same as those in the preceding report because, unfortunately, in some cases, the process of implementing them has not been completed and, in others, the recommendations have not been accepted at all.

148. The military officers on whom the implementation of the recommendations of the Ad Hoc Commission depended have now retired or at least been removed from their posts in the armed forces. In general, however, these retirements have not been the result of the implementation of the Ad Hoc Commission's recommendations, but of the fact that the persons concerned retired after completing the required period of active service in the armed forces. In any event, it is a welcome fact that, in practice, none of the officers referred to in the report of the Ad Hoc Commission is still on active service in the armed forces.

149. The recommendations of the Commission on the Truth, of which there are about 40, came under different headings. Some of them, which are inferred directly from the results of the investigations and must be acted on most urgently, are aimed at the immediate removal of factors relating directly to the acts investigated or to the fact that they have not been fully cleared up. Of particular significance are the requests that the officers identified as responsible for the crimes should be discharged and that the members of the Supreme Court should resign. The second group of recommendations seeks to find a solution to some structural problems directly linked to the acts examined by the Commission. The third group relates to institutional reforms to prevent the repetition of such acts. Lastly, the Commission formulated its considerations and recommendations with a view to national reconciliation.

150. In most cases, there has been only preliminary implementation of the recommendations, since Government agencies and legislative bodies are considering draft legislation and the Government is taking preliminary action. However, there are substantive issues on which the recommendations have not been implemented at all. This is the case of the recommendations on the organization and composition of the judicial system; the retirement of the military officers were referred to by the Commission on the Truth and who were not on the Ad Hoc Commission's list and, in general, the dismissal of the persons referred to in the report from their posts; the effectiveness of the

remedy of amparo; the recognition of the compulsory jurisdiction of the Inter-American Court of Human Rights; and accession to other international human rights instruments. The victims and their families have also not been compensated. To sum up, the recommendations of the Commission on the Truth have to date not had any practical impact and their partial implementation cannot in general terms be taken as a declaration of intent.

V. RECOMMENDATIONS

151. The Government of El Salvador should take maximum advantage of the presence of the ONUSAL Human Rights Division in the country. Its deployment is unprecedented in the history of the international protection of human rights and has brought together highly trained professionals who are in a position to provide the Government with immediate assistance, thereby enabling it to make substantial progress in the observance and safeguarding of human rights.

152. The Government should endeavour to implement the recommendations it receives, which are intended for the most constructive of purposes. Neither those formulated by the Independent Expert nor most of those by ONUSAL have been given further acceptance. In particular, the implementation of the recommendations of the Commission on the Truth, which are a genuine programme for anchoring El Salvador firmly in the community of democratic societies, should be a priority objective of the Government and of the country as a whole.

153. It is essential that the criminal practices that were on the increase in 1993 should be eradicated. The Joint Group for the Investigation of Illegal Armed Groups must be given full support so that it may shed light on the truth concerning the macabre death squads. Such support is not limited to the Government of El Salvador, but must come from any Government or democratic police force that is in a position to contribute to a clean-up that the civilized world has resolutely been calling for.

154. The strengthening of and support for the Office of the National Counsel for the Defence of Human Rights continue to be immediate and priority goals. In order to achieve them, the material, technical and human resources set aside by the State for carrying out its tasks under the Constitution must be concentrated on the Office of the National Counsel. The Government must cooperate with the Office for this purpose. It is essential that relations between the Office and non-governmental organizations should be improved. Through international cooperation, the Office of the National Counsel must be provided with the means of holding one or several seminars in the immediate future focusing on the relevant issues, with assistance from persons with expert knowledge of the issues. At least initially, it would also be helpful if one of the experts could act as a full-time consultant to the Office of the National Counsel.

155. The National Civil Police must be set up and developed in accordance with the model that resulted from the Peace Agreements, as a new force, with a new doctrine, separate from the armed forces. Great care must be taken to ensure that individuals from the armed forces or the former public security forces that were disbanded are not involved in the education of members of the PNC

and do not become PNC officers. The Criminal Investigation Division must be retained, as a skilled body, under the functional control of the Attorney-General of the Republic, for investigating criminal acts.

156. The Independent Expert believes that the separation between the administrative functions of the judicial system and the functions proper of the courts is both beneficial and necessary in order to guarantee the full independence of judges and lawyers. Accordingly, he is of the opinion that the current system, in which the functions in question are concentrated vertically within the Supreme Court of Justice, should be the subject of a careful review. This is a sensitive issue, which has its roots in a number of provisions of the Constitution and which must be dealt with soon as part of the power of Salvadorians to reform their Constitution, bearing in mind above all the harmful consequences of the current system, as well as the results of the investigations and recommendations of the Commission on the Truth.

157. In any event, the Independent Expert stresses the need to revise the National Council of the Judiciary Act without further delay so as to bring the Council's institutional regime into line with its status as an independent body and "to guarantee its independence from the organs of the State and from political parties", as agreed in the peace negotiations.

158. The Independent Expert once again strongly urges the Government of El Salvador, in accordance with the recommendations of the Commission on the Truth, to join the rest of the Central American nations and recognize the jurisdiction of the Inter-American Court of Human Rights as a means of providing the Salvadorian people with another instrument for the defence of its fundamental rights and for the strengthening, in a spirit of solidarity, of the system of protection of human rights in the hemisphere.

159. The unmet needs of the majority of Salvadorians regarding economic, social and cultural rights must be satisfied. In this connection, the implementation of the Peace Agreements provides the initial bases for action; their implementation must be extended with regard to the economic and social programme agreed on and the effective functioning of the Economic and Social Forum as an appropriate mechanism for consultation in this area.

160. The peace process in El Salvador needs greater support from the international community through the National Reconstruction Plan or any other appropriate means. For various reasons and motives, the international community was interested in seeing an end to the armed conflict in El Salvador. That interest should now be redoubled in order to contribute to the eradication of the causes that gave rise to the conflict.

161. It now seems clearer than ever that there is an inescapable link between lasting, substantial and irreversible progress in the observance and safeguarding of human rights and the implementation of the Agreements, which must be reflected in the model of society developed during the negotiations. The implementation of the Agreements is not only an obligation involving the honour of the parties, but the very means of achieving such a society. The Government and the FMLN embarked on the negotiations as military adversaries and emerged from them with an achievement and a joint programme on a historic scale. Neither they nor, for that matter, civilian society can agree to or

allow the partial implementation of the Agreements without inevitably taking a step backwards. This is a difficult uphill task and one that goes against the current, but, if a person climbing a hill does not keep trying until he reaches the top, he will always run the risk of rolling back down to the bottom. Renewed efforts are thus required to make an irreversible reality of all the projects handed over to the Salvadorian people before the eyes of the world on 16 January 1992.

Notes

1/ A/47/596, annex.

2/ E/CN.4/1993/11.

3/ A/45/1055-S/23037, annex; A/44/658-S/1[illegible]222, annex; A/46/876-S/23850, annex; A/46/955-S/24066, annex; A/46/955-S/24375, annex; A/47/912-S/25521, annex; A/47/968-S/26033, annex; and A/47/1012-S/26416, annex and Add.1.

4/ A/44/971-S/21541, annex.

5/ E/CN.4/1993/11, paras. 12 to 16.

6/ S/25241, S/25200 and S/25516.

7/ S/25812.

8/ S/25812, para. 103.

9/ S/25812, paras. 106, 107, 108, 110 and 112.

10/ S/25812/Add.2 and S/25812/Add.3, respectively.

11/ S/26005.

12/ S/26005, para. 5.

13/ S/26371, para. 3.

14/ Ibid., para. 10.

15/ Ibid., paras. 14 and 15.

16/ A/48/310.

17/ Ibid., para. 61.

18/ Ibid., para. 61.

19/ Ibid., para. 63.

20/ Ibid., para. 66.

21/ Ibid., para. 67.

22/ Ibid., para. 65.

23/ S/26581.

24/ See paras. 109 to 125.

25/ S/26581, para. 19.

26/ S/26606.

27/ E/CN.4/1994/2-E/CN.4/Sub.2/1993/45, paras. 245 and 246.

28/ Corrigendum. Supplement No. 3. E/1993/23/Corr.3-E/CN.4/1993/122/Corr.3.

29/ Commission on Human Rights resolution 1993/93, paras. 8 and 9.

30/ See E/CN.4/1993/11, paras. 23 to 31.

31/ E/CN.4/1993/11.

32/ S/25078.

33/ See paras. 109 to 125.

34/ A/47/912-S/25521, annex, para. 77.

35/ Ibid., para. 77.

36/ A/47/1012-S/26416, annex, para. 12.

37/ A/47/912-S/25521, annex, para. 48.

38/ Ibid., paras. 52 and 53.

39/ Ibid., para. 54.

40/ Ibid., para. 55.

41/ A/47/968-S/26033, annex, paras. 32 to 109.

42/ A/47/1012-S/26416, annex, para. 13.

43/ Ibid., para. 15.

44/ A/47/1012/Add.1-S/26416/Add.1, p. 9.

45/ Ibid.

46/ A/47/1012-S/26416, annex, para. 16.

47/ Ibid., para. 17.

48/ Ibid., para. 18.

49/ Press Release No. 235, para. 5.

50/ Ibid., para. 6.

51/ Ibid., para. 7.

52/ A/47/912-S/25521, paras. 67 to 74.

53/ A/47/1012-S/26416, para. 23, and A/47/1012/Add.1-S/26416/Add.1, pp. 10-11.

54/ A/47/1012/Add.1-S/26416/Add.1, pp. 10-12.

55/ A/47/968-S/26033, annex, paras. 112 to 123.

56/ A/47/1012-S/26416, annex, para. 25, and A/47/1012/Add.1-S/26416/Add.1, p. 13.

57/ A/47/1012/Add.1-S/26416/Add.1, pp. 13-14.

58/ A/47/912-S/25521, annex, para. 85.

59/ A/47/968-S/26033, annex, para. 111 in fine.

60/ A/47/968-S/26033, annex, paras. 126 to 128.

61/ A/47/1012-S/26416, annex, para. 27, and A/47/1012/Add.1-S/26416/Add.1, pp. 14-15.

62/ A/47/1012/Add.1-S/26416/Add.1, p.14.

63/ A/47/912-S/25521, annex, paras. 96 to 101.

64/ A/47/968-S/26033, annex, paras. 134 to 144.

65/ A/47/1012/Add.1-S/26416/Add.1, pp. 16-17.

66/ See A/47/912-S/25521, annex, para. 99.

67/ A/48/310.

68/ S/26790, para. 60.

69/ See CRC/C/15/Add.9.

70/ Ibid., para. 7.

71/ Ibid., para. 8.

72/ Ibid., para. 9.

73/ Ibid., para. 10.

74/ Ibid., paras. 11 and 12.

75/ Ibid., para. 13.

76/ Ibid., para. 19.

77/ Office of the National Counsel for the Defence of Human Rights, 1992-1993 Activity Report, chapter VII B, pp. 94 and 95.

78/ Constitution of the Republic of El Salvador, art. 168 (12).

79/ See above, paras. 117 to 119.

80/ From Madness to Hope: The 12-Year War in El Salvador. Report of the Commission on the Truth for El Salvador. United Nations. San Salvador-New York, p. 177.

81/ E/CN.4/1993/11, paras. 246 and 247.

82/ From Madness to Hope: The 12-Year War in El Salvador. Report of the Commission on the Truth for El Salvador. United Nations. San Salvador-New York, p. 187.

83/ Commission on Human Rights resolution 1993/93, paras. 5 and 9.

84/ S/25812, para. 53.

85/ S/26581.

86/ S/26581, para. 18.

87/ S/26790, para. 47.

88/ From Madness to Hope: The 12-Year War in El Salvador. Report of the Commission on the Truth for El Salvador. United Nations. San Salvador-New York, p. 176, para. I.C.

89/ S/26581, para. 5.

90/ Ibid., para. 13.

91/ S/26581, annex, p. 6, para. 3.

92/ From Madness to Hope: The 12-Year War in El Salvador. Report of the Commission on the Truth for El Salvador. United Nations. San Salvador-New York, p. 181, para. III. A.1.

93/ Ibid., p. 181, para. III. A.2.

94/ Ibid., p. 181, para. III. A.4.

95/ A/47/596, annex.

96/ E/CN.4/1993/11.

97/ E/CN.4/1993/11, para. 174.

98/ From Madness to Hope: The 12-Year War in El Salvador. Report of the Commission on the Truth for El Salvador. United Nations. San Salvador-New York, p. 183, para. III. B.2.

99/ San José Agreement on Human Rights (A/44/971-S/21541), para. I.4.

100/ From Madness to Hope: The 12-Year War in El Salvador. Report of the Commission on the Truth for El Salvador. United Nations. San Salvador-New York, p. 175, sect. 3.

101/ Constitution of the Republic of El Salvador, art. 146.

102/ E/CN.4/1993/11, para. 280.